UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LOCAL RULES as of [December 1, 2020][1]

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[1] These rules include amendments through General Order [20-17], which was filed on [November 9, 2020].

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LOCAL RULES

SECTION I: CIVIL RULES

LOCAL RULE CV-1 Scope and Purpose of Rules

(a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States, the Federal Rules of Civil Procedure, these local rules, and any orders entered by the court. These local rules shall be construed as consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit.

(b) **Admiralty Rules**. The Supplemental Rules for Certain Admiralty and Maritime Claims, as adopted by the Supreme Court of the United States, shall govern all admiralty and maritime actions in this court.

(c) **Patent Rules**. The "Rules of Practice for Patent Cases before the Eastern District of Texas" shall apply to all civil actions filed in or transferred to this court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim, or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid, or is unenforceable. Judges may opt out of this rule by entering an order.

LOCAL RULE CV-3 Commencement of Action

(a) **Habeas Corpus and 28 U.S.C. § 2255 Motions**. The clerk may require that petitions for a writ of habeas corpus and motions filed pursuant to 28 U.S.C. § 2255 be filed on a set of standardized forms approved by this court and supplied, upon request, by the clerk without cost to the petitioner. Petitioners who do not proceed *in forma pauperis* must pay a $5.00 filing fee. *See* 28 U.S.C. § 1914(a). There is no filing fee for Section 2255 motions filed by prisoners in federal custody.

(b) **Page Limitation for Petitions for a Writ of Habeas Corpus and 28 U.S.C. § 2255 Motions**. Absent leave of court, 28 U.S.C. §§ 2241 and 2254 habeas corpus petitions and 28 U.S.C. § 2255 motions and the initial responsive pleadings thereto, shall not exceed thirty pages in non-death penalty cases, and one hundred pages in death penalty cases, excluding attachments. Replies and sur-replies, along with all other motions and responses thereto, shall not exceed fifteen pages in length in non-death penalty cases and thirty pages in length in death penalty cases, excluding attachments. Documents that exceed ten pages in length must include a table of contents and table of authorities, with page references. Tables and certificates of service and conference are not counted against the applicable page limit.

(c) **Motions for Stay of Execution**. A motion for stay of execution filed on behalf of a petitioner challenging a sentence of death must be filed at least seven days before the petitioner's scheduled execution date or recite good cause for any late filing.

(d) **Page Limitations in Civil Rights Lawsuits**. Absent leave of court, complaints and the initial responsive pleadings thereto filed in civil rights proceedings shall not exceed thirty pages, excluding attachments. Documents that exceed ten pages in length must include a table of contents and table of authorities, with page references. Tables and certificates of service and conference shall not counted against the applicable page limit.

LOCAL RULE CV-4 Complaint, Summons, and Return

(a) At the commencement of the action, counsel shall prepare and file the civil cover sheet, Form JS 44, along with the complaint. When filing a patent, trademark, or copyright case, counsel is also responsible for electronically filing an AO Form 120 or 121 using the event Notice of Filing of Patent/Trademark Form (AO 120) or Notice of Filing of Copyright Form (AO 121).

If service of summons is not waived, the plaintiff must prepare and submit a summons to the clerk for each defendant to be served with a copy of the complaint. The clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.

(b) **Electronic Filing of Complaints.** Attorneys must electronically file a civil complaint upon opening a civil case in CM/ECF.

(c) On the complaint, all litigants shall type or print all party names contained in the case caption with the accurate capitalization and spacing for each party (e.g., Martha vanDerkloot, James De Borne). This procedure seeks to ensure that accurate computer party name searches can later be performed.

(d) Service of civil process shall not be executed by the United States Marshal except for government initiated process, extraordinary writ, or when ordered to do so by a judge. The party requesting service is responsible for preparing all process forms to be supplied by the clerk. When process is to be served by the United States Marshal, the party seeking service shall complete the required U.S. Marshal Form 285.

LOCAL RULE CV-5 Service and Filing of Pleadings and Other Documents

(a) **Electronic Filing Required**. Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

(1) **Exemptions from Electronic Filing Requirement**. The following are exempted from the requirement of electronic filing:

(A) In a criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; affidavits in support of search and arrest warrants, pen registers, trap and trace requests, wiretaps, and other related documentation; and *ex parte* documents filed in connection with ongoing criminal investigations;

(B) Documents filed by *pro se* litigants (prisoner and non-prisoner);

(C) Official administrative records or transcripts of prior court or administrative proceedings from other courts or agencies that are required to be filed by law, rule, or local rule; and

(D) Sealed civil complaints (these documents should be filed with the clerk along with a motion to seal the case pursuant to submission instructions provided by the clerk's office). *See* Local Rule CV-5(a)(7)(A).

(2) **Registration for Electronic Filing**.

(A) The clerk shall register all attorneys admitted to the bar of this court, including those admitted pro hac vice, as Filing Users of the court's Electronic Filing System. Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil and Criminal Procedure. The clerk shall provide Filing Users with a user log-in and password once registration is completed. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. After registration, attorneys are required to maintain their own account information, including changes in e-mail address. Documents sent from the court will be deemed delivered if sent to the last known e-mail address given to the court.

(B) With court permission, a *pro se* litigant may register as a Filing User in the Electronic Filing System solely for purposes of the action. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

(C) A Filing User may apply to the court for permission to withdraw from participation in the Electronic Filing System for good cause shown.

(3) **Significance of Electronic Filing**.

(A) Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes and constitutes entry of the document on the docket kept by the clerk. Receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.

(B) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the "entered on" date and time stated on the Notice of Electronic Filing

from the court.

(C) Service is deemed completed at the "entered on" date and time stated on the Notice of Electronic Filing from the court, except that documents filed electronically after 5:00 p.m. Central Time shall be deemed served on the following day.

(D) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight Central Time in order to be considered timely filed that day.

(4) **File Size Limitations**. No single electronic file, whether containing a document or an attachment, may exceed fifteen megabytes in size. Documents or attachments in excess of fifteen megabytes must be divided into multiple files and accurately described to the court. *See* Local Rule CV-7 (page requirements for motions and responses).

(5) **Signatures**. The user log-in and password required to submit documents to the Electronic Filing System serves as the Filing User's signature on all electronic documents filed with the court. The name of the Filing User under whose log-in and password the document is submitted must be preceded by either an image of the Filing User's signature or an "/s/" typed in the space where the signature would otherwise appear. *See* Local Rule CV-11(b) ("Signing the Pleadings").

(6) **Attachments and Exhibits**. Filing Users must submit and describe each exhibit or attachment with specificity as a separate PDF document, unless the court permits conventional filing. *See* Local Rules CV-5(a)(4) ("File Size Limitations"), CV-7(b) ("Documents Supporting Motions"), and CV-56(d) ("Proper Summary Judgment Evidence"). Non-documentary exhibits to motions (e.g., CD-ROM disks) should be filed with the clerk's office with a copy to the presiding judge.

(7) **Sealed Documents**.

(A) All sealed documents must state "Filed Under Seal" at the top of the document.

(B) Unless authorized by statute or rule, a document in a civil case shall not be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

(C) A motion to file document(s) under seal must be filed separately and immediately before the document(s) sought to be sealed. If the motion to seal is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the document will be struck. A motion to seal that is filed as a sealed document does not need to include the certification specified in Section (B) above. *See* Local Rule CR-49(b)

(additional rules regarding the filing of sealed documents in criminal cases).

(D) Documents requested or authorized to be filed under seal or *ex parte* shall be filed in electronic form. Service in "electronic form" shall be of documents identical in all respects to the documents(s) filed with the court; service copies shall not include encryption, password security, or other extra steps to open or access unless the same are found in the document as filed. All sealed or *ex parte* documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel and may do so in electronic form. Counsel is also responsible for complying with Local Rule CV-5(a)(9) regarding courtesy copies of filings. When a sealed order is entered by the court, the clerk will send a copy of the sealed order to each party's lead attorney who is responsible for distributing the order to all other counsel of record for that party. *See* Local Rule CV-11.

(E) Except as otherwise provided by Local Rule CR-49, a party filing a document under seal must publicly file a version of that document with the confidential information redacted within two days, unless the entire document is confidential information. For purposes of this rule, "confidential information" is information that the filing party contends is confidential or proprietary in a pending motion to file under seal; information that has been designated as confidential or proprietary under a protective order or non-disclosure agreement; or information otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

(8) **Entry of Court Orders**.

(A) All orders, decrees, judgments, and court proceedings will be filed electronically by the court or court personnel in accordance with these rules, which will constitute entry on the docket kept by the clerk. Any order filed electronically has the same force and effect as if the judge had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

(B) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

(9) **Paper Copies of Lengthy Documents**. Unless otherwise ordered by the presiding judge, if a document to be filed electronically exceeds ten pages in length, including attachments, a paper copy of the filed document must be sent contemporaneously to the presiding judge's chambers. A copy of the "Notice of Electronic Filing" must be attached to the front of the paper copy of the filed document. The paper copy should be sent directly to the judge's chambers and not to the clerk's office. *See* Local Rule CV-10(b) (regarding tabs and dividers for voluminous documents). Judges may opt

out of this rule by entering an order. Such orders can be found on the court's website, located at www.txed.uscourts.gov.

(10) **Technical Failures**. A technical failure does not relieve a party from exercising due diligence to timely file and serve documents. A Filing User whose filing is made untimely as the result of a technical failure of the court will have a reasonable grace period to file from the time that the technical failure is cured. There will be a notice on the court's website indicating when the database was down and the duration of the grace period. A Filing User whose filing is made untimely as the result of a technical failure not attributable to the court may seek appropriate relief from the court.

(b) **Filing by Paper**. When filing by paper is permitted, the original pleadings, motions, and other papers shall be filed with the clerk.

(c) **Certificates of Service**. The certificate of service required by Fed. R. Civ. P. 5(d) shall indicate the date and method of service. Sealed documents in civil cases must indicate that the sealed document was promptly served by means other than the CM/ECF system (e.g., e-mail, conventional mail).

(d) **Service by Facsimile or Electronic Means Authorized**. Except with regard to *pro se* litigants that have not consented in writing to receiving service by electronic means, parties may serve copies of pleadings and other case related documents to other parties by facsimile or electronic means in lieu of service and notice by mail. Such service is deemed complete upon sending. Service after 5:00 p.m. Central Time shall be deemed served on the following day for purposes of calculating responsive deadlines.

(e) **Service of Documents Filed by *Pro Se* Litigants**. A document filed by a *pro se* litigant shall be deemed "served" for purposes of calculating deadlines under the Local Rules or Federal Rules of Civil Procedure on the date it is electronically docketed in the court's CM/ECF system.

LOCAL RULE CV-5.2 Privacy Protections for Filings Made with the Court

(a) **Electronic Filing of Transcripts by Court Reporters**. The following procedures apply to all court transcripts filed on or after May 19, 2008. The court reporter or transcriber shall electronically file all court transcripts,[2] including a completed version of the attached "Notice of Filing of Official Transcript." Upon request, the clerk shall make an electronic version of any transcript available for public inspection without charge at the clerk's office public terminal. *See* 28 U.S.C. § 753(b).

(b) **Availability of Transcripts of Court Proceedings**. Electronically-filed transcripts of court proceedings are subject to the following rules:

(1) A transcript provided to a court by a court reporter or transcriber will be available at

[2] Contract court reporters may either file court transcripts electronically in the CM/ECF database or submit an electronic PDF version of the transcript to the clerk, who will thereupon file it.

the clerk's office for inspection for a period of ninety days after it is electronically filed with the clerk. During the ninety-day inspection period, access to the transcript in CM/ECF is limited to the following users: (a) court staff; (b) public terminal users; (c) attorneys of record or parties who have purchased the transcript from the court reporter or transcriber; and (d) other persons as directed by the court. During the ninety-day period, court staff may not copy or print transcripts for a requester and the transcript may not be printed from the public computer terminals in the clerk's office.

(2) During the ninety-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will also be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.

(3) Within seven days of the filing of the transcript in CM/ECF, each party wishing to redact a transcript must inform the court, by filing the attached "Notice of Intent to Request Redaction," of the party's intent to redact personal data identifiers from the transcript as required by Fed. R. Civ. P. 5.2. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not necessary.

(4) If redaction is requested, a party is to submit to the court reporter or transcriber and file with the court, within twenty-one days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal identifiers listed in Fed. R. Civ. P. 5.2. If an attorney wishes to redact additional information, he or she must make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion.

(5) The court reporter or transcriber must, within thirty-one days of the filing of the transcript, or longer if the court so orders, perform the requested redactions and file a redacted version of the transcript with the clerk. Redacted transcripts are subject to the same access restrictions as outlined above during the initial ninety days after the first transcript has been filed. The original unredacted electronic transcript shall be retained by the clerk as a restricted document.

(6) If, after the ninety-day period has ended, there are no redacted documents or motions linked to the transcript, the clerk will remove the public access restrictions and make the unredacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system.

(7) If, after the ninety-day period has ended, a redacted transcript has been filed with the court, the clerk will remove the access restrictions as appropriate and make the

redacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system or from the court reporter or transcriber.

LOCAL RULE CV-6 Computation of Time

Deficient or Corrected Documents. When a document is corrected or re-filed by an attorney following a deficiency notice from the clerk's office (e.g., for a missing certificate of service or certificate of conference), the time for filing a response runs from service of the corrected or re-filed document, not the original document.

LOCAL RULE CV-7 Pleadings Allowed; Form of Motions and Other Documents

(a) **Generally**. All pleadings, motions, and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and shall be accompanied by a separate proposed order in searchable and editable PDF format for the judge's signature. Each pleading, motion, or response to a motion must be filed as a separate document, except for motions for alternative relief (e.g., a motion to dismiss or, alternatively, to transfer). The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format and shall not contain restrictions or security settings that prohibit copying, highlighting, or commenting. All other documents, including attachments and exhibits, should be in "searchable PDF" form whenever possible.

(1) **Case Dispositive Motions**. Case dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. *See* Local Rule CV-56 (regarding attachments to motions for summary judgment and responses thereto). Any reply or sur-reply to an opposed case dispositive motion filed pursuant to Section (f) of this rule shall not exceed ten pages, excluding attachments.

Case dispositive motions shall contain a statement of the issues to be decided by the court. Responses to case dispositive motions must include a response to the movant's statement of issues.

(2) **Non-dispositive Motions**. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or sur-reply brief to an opposed non-dispositive motion filed pursuant to Section (f) of this rule shall not exceed five pages, excluding attachments. Non-dispositive motions include, among others, motions to transfer venue, motions for partial summary judgment, and motions for new trial pursuant to Fed. R. Civ. P. 59.

(3) **Total Page Limits for Summary Judgment Motions**. If a party files more than one

summary judgment motion, the following additional limitations apply:

(A) A party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(B) A nonmovant's responses to a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(C) Reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments; and

(D) A nonmovant's sur-reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments.

(4) **Motions to Reconsider**. Motions to reconsider must specifically state the action and the docket sheet document number to be reconsidered in the title of the motion (e.g., "Motion to Reconsider Denial of Motion for Partial Summary Judgment (dkt # x)").

(b) **Documents Supporting Motions**. When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. The court strongly recommends that any attached materials have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted or underlined material in context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

(c) **Briefing Supporting Motions**. The motion and any briefing shall be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Briefing is an especially helpful aid to the judge in deciding motions to dismiss, motions for summary judgment, motions to remand, and post-trial motions.

(d) **Response and Briefing**. The response and any briefing shall be contained in one document. A party opposing a motion shall file the response, any briefing and supporting documents within the time period prescribed by Subsection (e) of this rule. A response shall be accompanied by a proposed order conforming to the requirements of Subsection (a) of this rule. Briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies. A party's failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.

(e) **Time to File Response**. A party opposing a motion has fourteen days (twenty-one days for summary judgment motions) from the date the motion was served in which to file a response and any supporting documents, after which the court will consider the submitted motion for decision. Any party may separately move for an order of this court lengthening or shortening the response period.

(f) **Reply Briefs**. Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to the issues raised in the response within seven days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within seven days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

(g) **Oral Hearings**. A party may in a motion or a response specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.

(h) **"Meet and Confer" Requirement**. The "meet and confer" motions practice requirement imposed by this rule has two components, a substantive and a procedural component.

For opposed motions, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between an attorney for the movant and an attorney for the non-movant. In any discovery-related motion, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between the lead attorney and any local counsel for the movant and the lead attorney and any local counsel for the non-movant.

In the personal conference, the participants must give each other the opportunity to express his or her views concerning the disputes. The participants must also compare views and have a discussion in an attempt to resolve their differing views before coming to court. Such discussion requires a sincere effort in which the participants present the merits of their respective positions and meaningfully assess the relative strengths of each position.

In discovery-related matters, the discussion shall consider, among other things: (1) whether and to what extent the requested material would be admissible in a trial or is reasonably calculated to lead to the discovery of admissible evidence; (2) the burden and costs imposed on the responding party; (3) the possibility of cost-shifting or sharing; and (4) the expectations of the court in ensuring that parties fully cooperate in discovery of relevant information.

Except as otherwise provided by this rule, a request for court intervention is not appropriate until the participants have met and conferred, in good faith, and concluded, in good faith, that the discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. Good faith requires honesty in one's purpose to discuss meaningfully the dispute, freedom from intention to defraud or abuse the discovery process and faithfulness to one's obligation to secure information without court intervention. For opposed motions, correspondence, e-mails, and facsimile transmissions do not constitute compliance with the substantive component and are not evidence of good faith. Such materials, however, may be used to show bad faith of the author.

An unreasonable failure to meet and confer violates Local Rule AT-3 and is grounds for disciplinary action. A party may file an opposed motion without the required conference only when the non-movant has acted in bad faith by failing to meet and confer.

The procedural requirement of the "meet and confer" rule is one of certification. It appears in Section (i) of this rule, entitled "Certificates of Conference."

(i) **Certificates of Conference**. Except as specified below, all motions must be accompanied by a "certificate of conference" at the end of the motion following the certificate of service. The certificate must state: (1) that counsel has complied with the meet and confer requirement in Local Rule CV-7(h); and (2) whether the motion is opposed or unopposed. Opposed motions shall include a statement in the certificate of conference, signed by the movant's attorney, that the personal conference or conferences required by this rule have been conducted or were attempted, the date and manner of such conference(s) or attempts, the names of the participants in the conference(s), an explanation of why no agreement could be reached, and a statement that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. In discovery-related motions, the certificate of conference shall be signed by the lead attorney and any local counsel. In situations involving an unreasonable failure to meet and confer, the movant shall set forth in the certificate of conference the facts believed to constitute bad faith.

Neither the "meet and confer" nor the "certificate of conference" requirements are applicable to *pro se* litigants (prisoner or non-prisoner) or to the following motions:

(1) to dismiss;

(2) for judgment on the pleadings;

(3) for summary judgment, including motions for partial summary judgment;

(4) for judgment as a matter of law;

(5) for new trial;

(6) issuance of letters rogatory;

(7) objections to report and recommendations of magistrate judges or special masters;

(8) for reconsideration;

(9) for sanctions under Fed. R. Civ. P. 11, provided the requirements of Fed. R. Civ. P. 11(c)(2) have been met;

(10) for writs of garnishment; and

(11) any enforcement remedy provided for by the Federal Debt Collection Procedure Act, 28 U.S.C. § 3101, *et seq*.

(j) **Re-urged Motions in Transferred/Removed Cases**. Except in prisoner cases, any motions pending in another federal or state court made by any party will be considered moot at the

time of transfer or removal unless they are re-urged in this court. *See* Local Rule CV-81(d).

(k) **Motions for Leave to File**. Motions for leave to file a document should be filed separately and immediately before the document for which leave is sought. If the motion for leave to file is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the document will be struck or, in the case of motions to file a document exceeding page limitations, the excess pages and attachments cited only therein will not be considered by the court. The time for filing any responsive documents will run from the date of the order on the motion for leave.

(l) **Emergency Motions**. Emergency motions are only those necessary to avoid imminent, irreparable harm such that a motion pursuant to LOCAL RULE CV-7(e) to shorten the period for a response is inadequate. Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word "emergency;" (2) the motion is electronically filed using the CM/ECF drop down menu option entitled "emergency;" (3) the motion clearly states the alleged imminent, irreparable harm and the circumstances making proceeding under LOCAL RULE CV-7(e) inadequate; and (4) the chambers of the presiding judge is notified, either by telephone, e-mail, or fax, that an emergency motion has been filed.

(m) **Motions *in Limine***. Motions *in limine* should be contained within a single document subject to the page limitations of Local Rule CV-7(a)(2) for non-dispositive motions.

LOCAL RULE CV-10 Form of Pleadings

(a) **Generally**. When offered for filing, all documents, excluding preexisting documentary exhibits and attachments, shall:

(1) be endorsed with the style and number of the action;

(2) have a caption containing the name and party designation of the party filing the document and a statement of the character of the document clearly identifying it (e.g., Defendant John Doe's Answer; Defendant John Doe's Motion to Dismiss under Rule 12(b)(6)). *See* Local Rule CV-38(a) (cases involving jury demands); *see also* Local Rule CV-7(a) (each motion must be filed as a separate document, except when the motion concerns a request for alternative relief);

(3) be signed by the lead attorney or with his or her permission;

(4) when filed by paper, be plainly written, typed, or printed, double-spaced, on $8^{1/2}$ inch by 11-inch white paper; and

(5) be double spaced and in a font no smaller than 12-point type.

(b) **Tabs and Dividers**. When filed by paper, original documents offered for filing shall not include tabs or dividers. The copy of the original that is required to be filed for the court's use, if voluminous, should have dividers or tabs, as should all copies sent to opposing counsel. *See* Fed. R. Civ. P. 5(a).

(c) **Covers**. "Blue backs" and other covers are not to be submitted with paper filings.

(d) **Deficient Pleadings/Documents**. The clerk shall monitor documents for compliance with the federal and local rules as to format and form. If the document sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity, preferably within one day, to cure the perceived defect. If the perceived defect is not cured in a timely fashion, the clerk shall refer the matter to the appropriate district or magistrate judge for a ruling as to whether the documents should be made part of the record.

(e) **Hyperlinks**. Electronically filed documents may contain the following types of hyperlinks:

(1) Hyperlinks to other portions of the same document;

(2) Hyperlinks to CM/ECF that contains a source document for a citation;

(3) Hyperlinks to documents already filed in any CM/ECF database;

(4) Hyperlinks between documents that will be filed together at the same time;

(5) Hyperlinks that the clerk may approve in the future as technology advances.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

LOCAL RULE CV-11 Signing of Pleadings, Motions, and Other Documents

(a) **Lead Attorney**.

(1) **Designation**. On the first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise.

(2) **Responsibility**. The lead attorney is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.

(b) **Signing the Pleadings**. Every document filed must be signed by the lead attorney or by an attorney of record who has the permission of the lead attorney. Requests for postponement of the trial shall also be signed by the party making the request.

(1) **Required Information**. Under the signature, the following information shall appear:

(A) attorney's individual name;

(B) state bar number;

(C) office address, including zip code;

(D) telephone and facsimile numbers; and

(E) e-mail address.

(c) **Withdrawal of Counsel**. Attorneys may withdraw from a case only by motion and order under conditions imposed by the court. When an Assistant United States Attorney enters an appearance in a case, another Assistant United States Attorney may replace the attorney by filing a notice of substitution that identifies the attorney being replaced. Unless the presiding judge otherwise directs, the notice effects the withdrawal of the attorney being replaced. Change of counsel will not be cause for delay.

(d) **Change of Address**. Notices will be sent only to an e-mail and/or mailing address on file. A *pro se* litigant must provide the court with a physical address (i.e., a post office box is not acceptable) and is responsible for keeping the clerk advised in writing of his or her current physical address. *Pro se* litigants must also advise the court of the case numbers of all pending cases in which they are participants in this district.

(e) **Request for Termination of Electronic Notice**. If an attorney no longer desires to receive electronic notification of filings in a particular case due to settlement or dismissal of his or her client, the attorney may file a request for termination of electronic notice.

(f) **Sanctions Concerning Vexatious *Pro Se* Litigants**. The court may make orders as are appropriate to control the conduct of a vexatious *pro se* litigant. *See* Local Rule CV-65.1(b).

LOCAL RULE CV-12 Filing of Answers and Defenses

An attorney may request that the deadline be extended for a defendant to answer the complaint or file a motion under Fed. R. Civ. P. 12(b). Unless otherwise ordered by the court, where the requested extension: (1) is not opposed; and (2) is not more than thirty days and does not result in an overall extension of the defendant's deadline exceeding forty-five days, the request shall be by application to the clerk, not motion. The application shall be acted upon with dispatch by the clerk on the court's behalf, and the deadline to answer or otherwise respond is stayed pending action by the clerk.

LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure

(a) **No Excuses**. Absent a court order to the contrary, a party is not excused from responding to discovery because there are pending motions to dismiss, to remand, or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit discovery to those materials necessary to decide the issue of qualified immunity.

(b) **Disclosure of Expert Testimony**.

(1) When listing the cases in which the witness has testified as an expert, the disclosure shall include the styles of the cases, the courts in which the cases were pending, the cause numbers, and whether the testimony was in trial or by deposition.

(2) By order in the case, the judge may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.

(c) **Notice of Disclosure**. The parties shall promptly file a notice with the court that the disclosures required under Fed. R. Civ. P. 26(a)(1) and (a)(2) have taken place.

(d) **Relevant to Any Party's Claim or Defense**. The following observations are provided for counsel's guidance in evaluating whether a particular piece of information is "relevant to any party's claim or defense:"

(1) it includes information that would not support the disclosing parties' contentions;

(2) it includes those persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;

(3) it is information that is likely to have an influence on or affect the outcome of a claim or defense;

(4) it is information that deserves to be considered in the preparation, evaluation, or trial of a claim or defense; and

(5) it is information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate, or try a claim or defense.

(e) **Discovery Hotline (903) 590-1198**. The court shall provide a judge on call during business hours to rule on discovery disputes and to enforce provisions of these rules. Counsel may contact the duty judge for that month by dialing the hotline number listed above for any case in the district and get a hearing on the record and ruling on the discovery dispute, including whether a particular discovery request falls within the applicable scope of discovery, or request to enforce or modify provisions of the rules as they relate to a particular case.

LOCAL RULE CV-30 Depositions Upon Oral Examination

In cases where there is a neutral non-party witness or a witness whom all parties must examine, the time limit shall be divided equally among plaintiffs and defendants. Depositions may be taken after 5:00 p.m., on weekends, or holidays with approval of a judge or by agreement of counsel. Unless permitted by Fed. R. Civ. P. 30(c)(2), a party may not instruct a deponent not to answer a question. Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, nonresponsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived.

LOCAL RULE CV-34 Production of Documents and Things

Authorizations. At any time after the parties have conferred as required by Fed. R. Civ. P. 26(f), a party may request medical records, wage and earning records, or Social Security Administration records of another party as follows:

(a) Where a party's physical or mental condition is at issue, that party shall provide to the opposing counsel either the party's medical records or a signed authorization so that records of health care providers which are relevant to injuries and damages claimed may be obtained. If additional records are desired, the requesting party must show the need for them.

(b) Where lost earnings, lost earning capacity, or back pay is at issue, the party making such claims shall furnish signed authorizations to the opposing party's counsel so that wage and earning records of past and present employers and the Social Security Administration records may be obtained.

(c) Copies of any records obtained with authorizations provided pursuant to Sections (1) or (2) above shall be promptly furnished to that party's counsel. Records obtained shall remain confidential. The attorney obtaining such records shall limit their disclosure to the attorney's client (or, in the case of an entity, those employees or officers of the entity necessary to prepare the defense), the attorney's own staff, and consulting and testifying experts who may review the records in connection with formulating their opinions in the case.

LOCAL RULE CV-38 Right to a Jury Trial; Demand

(a) **Jury Demand**. A party demanding trial by jury pursuant to Fed. R. Civ. P. 38(b) is encouraged to do so by electronically filing a separate document styled as a "jury demand." If the jury demand is included in a pleading, that pleading must bear the word "jury" at the top, immediately below the case number. *See* Fed. R. Civ. P. 38(b)(1).

(b) **Taxation of Jury Costs for Late Settlement**. Except for good cause shown, whenever the settlement of an action tried by a jury causes a trial to be postponed, canceled, or terminated before a verdict, all juror costs, including attendance fees, mileage, and subsistence, may be imposed upon the parties unless counsel has notified the court and the clerk's office of the settlement at least one day prior to the day on which the trial is scheduled to begin. The costs shall be assessed equally against the parties and their counsel unless otherwise ordered by the court.

LOCAL RULE CV-42 Consolidation; Separate Trials Consolidation of Actions

(a) **Duty to Notify Court of Collateral Proceedings and Re-filed Cases**. Whenever a civil matter commenced in or removed to the court involves subject matter that either comprises all or a material part of the subject matter or operative facts of another action, whether civil or criminal, then pending before this or another court or administrative agency, or previously dismissed or decided by this court, counsel for the filing party shall identify the collateral

proceedings or re-filed case(s) on the civil cover sheet filed in this court. The duty to notify the court and opposing counsel of any collateral proceeding continues throughout the pendency of the action.

(b) **Consolidation—Multiple Judges Involved**. Upon the assignment of related actions to two or more different judges with the district, the affected judges may, in their discretion, agree to assign the related actions to one judge.

LOCAL RULE CV-43 Taking of Testimony

Interpreters in Civil Cases Not Instituted by the United States. The presiding judge shall approve the utilization of interpreters in all civil cases not instituted by the United States. Absent a judicial order to the contrary, the presiding judge shall encourage the use of certified interpreters, or when no certified interpreter is reasonably available, "otherwise qualified" interpreters. *See* 28 U.S.C. § 1827(b). The presiding judge may approve the use of an interpreter who is not certified or "otherwise qualified" if no certified or "otherwise qualified" interpreter is reasonably available. Upon request, the clerk shall make lists of certified and otherwise qualified interpreters available to parties.

LOCAL RULE CV-47 Selecting Jurors

Communication with Jurors.

(a) No party or attorney for a party shall converse with a member of the jury during the trial of an action.

(b) After a verdict is rendered, an attorney must obtain leave of court to converse with members of the jury.

LOCAL RULE CV-50 Judgment as a Matter of Law in a Jury Trial

Total Page Limits for Motions for Judgment as a Matter of Law. The total page limits imposed by Local Rule CV-7(a)(3) on motions for summary judgment shall also apply to motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50.

LOCAL RULE CV-54 Judgments; Costs

(a) A party awarded costs by final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b) must apply to the clerk for taxation of such costs by filing a bill of costs. Unless otherwise provided by statute or by an order of the presiding judge, the bill of costs must be filed with the clerk and served on any party entitled to such service no later than fourteen days after the clerk enters the judgment on the docket.

(b) **Procedure for Contested Bill of Costs**. Before filing a bill of costs, a party must:

(1) submit the proposed bill of costs to opposing counsel for review in light of the applicable law; and

(2) if there are any areas of disagreement, meet and confer with opposing counsel in an effort to submit an agreed bill of costs to the court. If the parties have a legitimate dispute on which they cannot agree, the parties have the option of filing either (A) a joint motion indicating the areas of agreement and the areas of disagreement to be resolved by the court or (B) a motion by the party requesting costs indicating the areas of agreement and the areas of disagreement to be resolved by the court, to which the opposing party may file a response. Either type of motion must contain a certificate confirming compliance with the conference requirements of this rule.

LOCAL RULE CV-56 Summary Judgment Procedure

(a) **Motion**. Any motion for summary judgment must include: (1) a statement of the issues to be decided by the court; and (2) a "Statement of Undisputed Material Facts." If the movant relies upon evidence to support its motion, the motion should include appropriate citations to proper summary judgment evidence as set forth below. Proper summary judgment evidence should be attached to the motion in accordance with Section (d) of this rule.

(b) **Response**. Any response to a motion for summary judgment must include: (1) a response to the statement of issues; and (2) a response to the "Statement of Undisputed Material Facts." The responsive brief should be supported by appropriate citations to proper summary judgment evidence as set forth below. Proper summary judgment evidence should be attached in accordance with Section (d) of this rule.

(c) **Ruling**. In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the responsive brief filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to unearth an undesignated genuine issue of material fact.

(d) **Proper summary judgment evidence**. As used within this rule, "proper summary judgment evidence" means excerpted copies of pleadings, depositions, documents, electronically stored information, answers to interrogatories, admissions, affidavits or declarations, stipulations (including those made for purposes of the motion only), and other admissible evidence cited in the motion for summary judgment or the response thereto. "Appropriate citations" means that any excerpted evidentiary materials that are attached to the motion or the response should be referred to by page and, if possible, by line. Counsel are strongly encouraged to highlight or underline the cited portion of any attached evidentiary materials, unless the citation encompasses the entire page. The page preceding and following a highlighted page may be submitted if necessary to place the highlighted material in context. Only relevant, cited-to excerpts of evidentiary materials should be attached to the motion or the response.

LOCAL RULE CV-62 Stay of Proceedings to Enforce a Judgment

(a) **Bond or Other Security**. Unless otherwise ordered by the presiding judge, a bond or other security staying execution of a money judgment shall be in the amount of the judgment, plus 20% of that amount to cover interest and any award of damages for delay, plus $250.00 to cover costs. The parties may waive the requirement of a bond or other security by stipulation.

The bond shall:

(1) confirm whether the security provider is on the Treasury Department's list of certified companies, unless the court orders otherwise (a link to this list may be found on the court's website); and

(2) confirm the underwriting limitation, if applicable for the type of security.

(b) **Electronic Filing Requirement for Bonds**. When a bond or other security is posted for any reason, it must be electronically filed in the case by the posting party. The paper original of the security shall be retained by the posting party unless otherwise directed by the court.

LOCAL RULE CV-63 Inability of a Judge to Proceed, Reassignment of Actions after Recusal or Disqualification

(a) **Single-Judge Divisions**.

(1) Upon the disqualification or recusal of a judge from participation in an action or proceeding pending in a division wherein actions are assigned to only one judge, a reassignment of the action or matter shall be made in accordance with an order of the chief judge of the district.

(2) When the chief judge is the only judge who is assigned actions in a particular division and is disqualified or recuses himself in an action or proceeding pending in that division, the action or matter systematically shall be reassigned to the judge in active service, present in the district and able and qualified to act as chief judge, who is senior in precedence over the remaining judges in the district. Such action or matter may be reassigned by such acting chief judge as provided in Section (a)(1) above.

(b) **Multi-Judge Divisions**. Upon the disqualification of a judge from participation in an action or proceeding pending in a division wherein the caseload is divided between two judges, the action or matter systematically shall be reassigned and transferred to the other judge sitting in that division. Where the caseload in the division is divided between more than two judges, the action or matter systematically shall be randomly reassigned and transferred to a judge in the division who is not disqualified. The clerk shall randomly assign another case to the recusing/disqualified judge in place of the case he or she recused in or was disqualified in. In instances where each judge in a two-judge or a multi-judge division recuses himself or herself or is disqualified, the action or matter systematically shall be reassigned and transferred in accordance with an order of the chief judge of the district to any judge in active service, in

another division, who is not disqualified.

(c) **All Judges Disqualified**. If all judges in the district recuse themselves or are disqualified to preside over a particular civil or criminal action or matter, the clerk shall, without delay, so certify to the chief judge of the United States Court of Appeals for the Fifth Circuit, in order that he may re-assign such action or matter to a suitable judge.

(d) **Recusal When Former Judge of this District Appears as Counsel**. For a period of one year after the retirement or resignation of a former federal judge of this district, the judges of this court shall recuse themselves in any case in which the former colleague appears as counsel. *See* 28 U.S.C. § 455; Committee on Codes of Conduct Advisory Opinion No. 70.

LOCAL RULE CV-65 Injunctions

An application for a temporary restraining order or for a preliminary injunction shall be made on an instrument separate from the complaint.

LOCAL RULE CV-65.1 Security; Proceedings Against Sureties

(a) **No Attorneys, Clerks, or Marshals as Sureties**. No attorney, clerk, or marshal, or the deputies of any clerk or marshal shall be received as security on any cost, bail, attachment, forthcoming or replevy bond, without written permission of a judge of this court.

(b) **Vexatious Litigants; Security for Costs**. On its own motion or on motion of a party and after an opportunity to be heard, the court may at any time order a *pro se* litigant to give security in such amount as the court determines to be appropriate to secure the payment of any costs, sanctions, or other amounts which may be awarded against a vexatious *pro se* litigant.

LOCAL RULE CV-72 Magistrate Judges

(a) **Powers and Duties of a United States Magistrate Judge in Civil Cases**. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(b) **Objections to Non-dispositive Matters — 28 U.S.C. § 636(b)(1)(A)**. An objection to a magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. A party may respond to another party's objections within fourteen days after being served with a copy; however, the court need not await the filing of a response before ruling on an objection. No further briefing is allowed absent leave of court.

(c) **Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B)**. Objections to reports and recommendations and any response thereto shall not exceed eight pages. No further briefing is allowed absent leave of court.

(d) **Assignment of Matters to Magistrate Judges**. The method for assignment of duties to a

magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a

LOCAL RULE CV-77 District Courts and Clerks

Notice of Orders, Judgments, and Other Filings. The clerk may serve and give notice of orders, judgments, and other filings by e-mail in lieu of service and notice by conventional mail to any person who has signed a filed pleading or document and provided an e-mail address with his/her pleadings as specified in Local Rule CV-11(b)(1)(E). Any other attorney who wishes to receive notice of judicial orders, judgments, and other filings must file a notice of appearance of counsel with the court.

By providing the court with an e-mail address, the party submitting the pleadings is deemed to have consented to receive service and notice of judicial orders and judgments from the clerk by e-mail. Lead attorneys who wish to be excluded from receiving judicial notices by e-mail may do so by filing a motion with the court; non-lead attorneys who wish to be excluded from e-mail noticing may do so by filing a notice with the court.

Notice of judicial orders, judgments, and other filings is complete when the clerk obtains electronic confirmation of the receipt of the transmission. Notice by e-mail by the clerk that occurs after 5:00 p.m. on any day is deemed effective as of the following day.

LOCAL RULE CV-79 Records Kept by the Clerk

(a) **Submission of Hearing/Trial Exhibits**.

(1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without a court order. The clerk shall return to the party any physical exhibits not complying with this rule.

(2) Exhibits shall be properly marked but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. Additional copies of exhibits may be submitted in binders for the court's use.

(3) The parties shall provide letter-sized copies of any documentary, physical, or oversized exhibit to the court prior to the conclusion of a hearing/trial. At the conclusion of a hearing/trial, the parties shall provide the courtroom deputy with PDF copies of all exhibits that were admitted by the court, unless otherwise ordered. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

(b) **Hazardous Documents or Items Sent to the Court**. Prisoners and other litigants shall not send to this court (including the district clerk, any judges, and any other court agency) documents or items that constitute a health hazard as defined below:

(1) The clerk is authorized to routinely and immediately dispose of, without seeking a

judge's permission, any papers or items sent to the court by prisoners or other litigants that are smeared with or contain blood, hair, food, feces, urine, or other body fluids. Although "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice," Fed. R. Civ. P. 5(d), papers or other items containing or smeared with excrement or body fluids are excepted from this rule on the ground that they constitute a health hazard and can be refused by the clerk for that reason, which is a reason other than improper form.

(2) In the event the clerk receives weapons or drugs that are intended to be filed as exhibits, the clerk shall notify the judge assigned to the case of that fact, or in the event that no case has been filed, the chief judge.

(3) The clerk shall maintain a log of the items that are disposed of pursuant to General Order 96-6. The log shall contain the case number and style, if any, the name of the prisoner or litigant who sent the offending materials, and a brief description of the item disposed of. The clerk also shall notify the prisoner/litigant and, if applicable, the warden or other supervising official of the appropriate correctional facility that the item in question was destroyed and that sanctions may be imposed if the prisoner continues to forward papers, items, or physical exhibits in violation of General Order 96-6.

LOCAL RULE CV-81 Removed Actions

Parties removing cases from state court to federal court shall comply with the following:

(a) File with the clerk a notice of removal which reflects the style of the case exactly as it was styled in state court;

(b) If a jury was requested in state court, the removed action will be placed on the jury docket of this court provided the removing party or parties file a separate jury demand pursuant to Local Rule CV-38(a);

(c) The removing party or parties shall furnish to the clerk the following information at the time of removal:

(1) a list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (e.g., pending, dismissed);

(2) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. § 1446(a);

(3) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and party or parties represented by

that attorney;

(4) a record of which parties have requested jury trial (this information is in addition to filing a separate jury demand pursuant to Local Rule CV-38(a)); and

(5) the name and address of the court from which the case was removed.

(d) Any motions pending in state court will be considered moot at the time of removal unless they are re-urged in this court.

LOCAL RULE CV-83 Rules by District Courts; Judge's Directives

(a) **Docket Calls**. Traditional docket calls are abolished. Each judge shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls.

(b) **Transferred or Remanded Cases**. Absent an order to the contrary, no sooner than the twenty-first day following an order of the court transferring or remanding a case, the clerk shall transmit the case file to the directed court. Where a case has been remanded to state court, the clerk shall mail: (1) a certified copy of the court's order and docket sheet directing such action; and (2) all pleadings and other documents on file in the case. Where a case has been transferred to another federal district court, the electronic case file shall be transferred to the directed court. If a timely motion for reconsideration of the order of transfer or remand has been filed, the clerk shall delay mailing or transferring the file until the court has ruled on the motion for reconsideration.

(c) **Standing Orders**. Any standing order adopted by a judge pursuant to Fed. R. Civ. P. 83(b) must conform to any uniform numbering system prescribed by the Judicial Conference of the United States and must be filed with the clerk. The court will periodically review all standing orders for compliance with Rule 83(b) and for possible inclusion in the local rules. This subsection does not apply to provisions in scheduling or other case-specific orders.

(d) **Courtroom Attire and Conduct**. All persons present in a courtroom where a trial, hearing, or other proceeding is in progress must dress and conduct themselves in a manner demonstrating respect for the court. The presiding judge has discretion to establish appropriate standards of dress and conduct.

(e) **Alternative Dispute Resolution**. – Consistent with 28 U.S.C. § 651, the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, is authorized. Litigants in all civil actions shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. This consideration shall include, but is not limited to, mediation as provided in the Court-Annexed Mediation Plan set forth on the court's website (per General Order 14-06) which is incorporated herein by reference.

SECTION II: CRIMINAL RULES

LOCAL RULE CR-1 Scope

The rules of procedure in any criminal proceeding in this court are those prescribed by the laws of the United States, the Federal Rules of Criminal Procedure, these local rules, and any orders entered by the court. These rules shall be construed as consistent with acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit.

LOCAL RULE CR-6 The Grand Jury

(a) **Selection of Grand Jurors**. Grand jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statute and rule.

(b) **Grand Jury Subpoenas**. Sealed grand jury subpoenas shall be kept by the clerk for three years from the date the witness is ordered to appear. After that time, the clerk may destroy the subpoenas.

(c) **Signature of the Grand Jury Foreperson**. The grand jury foreperson shall sign the indictment with initials rather than his or her whole name. The foreperson will continue to sign the concurrence of the grand jury using his or her whole name.

LOCAL RULE CR-10 Arraignments

In the interest of reducing delays and costs, judges and magistrate judges may conduct the arraignment at the same time as the post-indictment initial appearance.

LOCAL RULE CR-24 Trial Jurors

(a) **Communication with Jurors**.

(1) No party or attorney for a party shall converse with a member of the jury during the trial of an action.

(2) After a verdict is rendered, an attorney must obtain leave of court to converse with members of the jury.

(b) **Signature of the Petit Jury Foreperson**. The petit jury foreperson shall sign all documents or communications with the court using his or her initials.

LOCAL RULE CR-47 Motions

(a) **Form and Content of a Motion**. All motions and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and be accompanied by a separate proposed order for the judge's signature. The proposed order shall be endorsed with the style and cause number and shall not include a date

or signature block. Dispositive motions—those which could, if granted, result in the dismissal of an indictment or counts therein or the exclusion of evidence—shall contain a statement of the issues to be decided by the court. Responses to dispositive motions must include a response to the movant's statement of issues. All motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format. All other documents, including attachments and exhibits, should be in "searchable PDF" form whenever possible.

(1) **Page Limits**.

(A) **Dispositive Motions**. Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed ten pages, excluding attachments.

(B) **Non-dispositive Motions**. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed five pages, excluding attachments.

(2) **Briefing Supporting Motions and Responses**. The motion and any briefing shall be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Likewise, the response and any briefing shall be contained in one document. Such briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies.

(3) **Certificates of Conference**. Except as specified below, all motions must be accompanied by a "certificate of conference." It should be placed at the end of the motion following the certificate of service. The certificate must state: (1) that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention; and (2) whether the motion is opposed or unopposed. Motions for continuance should also state whether the motion is opposed by any co-defendant or certify counsel's inability to obtain the position of a particular co-defendant despite a good faith attempt to do so. Certificates of conference are not required of *pro se* litigants (prisoner or non-prisoner) or for the following motions:

(A) motions to dismiss;

(B) motions for judgment of acquittal;

(C) motions to suppress;

(D) motions for new trial;

(E) any motion permitted to be filed *ex parte*;

(F) objections to report and recommendations of magistrate judges;

(G) motions for reconsideration;

(H) dispositive motions; and

(I) any motion related to enforcement of a debt, including relief under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3101, *et seq.* and the All Writs Act, 28 U.S.C. § 1651.

(b) **Timing of a Motion**.

(1) **Responses**. A party opposing a motion has fourteen days from the date the motion was served in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision. Any party may separately move for a court order lengthening or shortening the period within which a response may be filed.

(2) **Reply Briefs and Sur-Replies**. Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within seven days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within seven days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

(c) **Affidavit Supporting a Motion**. When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. It is strongly recommended that any attached materials have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted or underlined material in context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

LOCAL RULE CR-49 Service and Filing

(a) **Generally**. All pleadings and documents submitted in criminal cases must conform to the filing, service, and format requirements contained in Local Rules CV-5, CV-10, and CV-11.

(1) **Defendant Number**. In multi-defendant cases, each defendant receives a "defendant number." The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, parties shall identify by name and number each defendant to whom a document applies.

(2) **Sealed Indictments**. In multi-defendant cases involving one or more sealed indictments, the government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) **Public Access to Criminal Case Documents Generally**. In order to serve the legal presumption of openness in criminal case proceedings, pleadings in this court are generally to be filed unsealed. Except for the documents listed in Section (c) of this rule, decisions as to whether to seal a particular pleading are made on a case-by-case basis by the court, with findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered.

(1) Absent specific court findings to the contrary, all documents other than those specifically listed in paragraph (c) below and those submitted with a motion to seal in accordance with Local Rules CV-5(a)(7) and CR-49(a) are to remain unsealed.

(c) **Authorization to Routinely Seal Particular Types of Criminal Case Documents**. Despite the general rule cited in Section (b) above, there is an overriding interest in routinely sealing certain types of criminal case documents, because public dissemination of the documents would substantially risk endangering the lives or safety of law enforcement officers, United States Marshals, agents, defendants, witnesses, cooperating informants, judges, court employees, defense counsel, prosecutors, or their respective family members, and could jeopardize continuing criminal investigations. The documents that trigger this overriding interest are:

(1) unexecuted summonses or warrants (e.g., search warrants, arrest warrants);

(2) pen register or a trap and trace device applications pursuant to either 18 U.S.C. § 3121 *et seq.* or 18 U.S.C. § 2516 *et seq.*;

(3) pretrial bail or presentence investigation reports and any addenda and objections thereto;

(4) the statements of reasons in the judgment of conviction;

(5) plea agreements,[3] which are governed by Section (d) below;

(6) addenda to plea agreements described in Section (e) below;

(7) motions for downward departure for substantial assistance, and responsive pleadings and orders granting or denying the same;

(8) motions pursuant to Section 5K1.1 of the United States Sentencing Guidelines,

[3] The plea agreement does not include the factual basis of the offense and stipulation or the elements of the offense, which are separate documents typically filed at the same time as the plea agreement.

memoranda in support thereof, responsive pleadings and orders granting or denying the same;

(9) motions for reduction of sentence under Fed. R. Crim. P. 35(b), memoranda in support thereof, responsive pleadings and orders granting or denying the same;

(10) amended judgments pursuant to a grant of a Fed. R. Crim. P. 35(b) motion; and

(11) orders restoring federal benefits filed in conjunction with item 10 above.

The documents listed above shall be filed under seal without need of a motion to seal or a certification by counsel. Other than plea agreements, the documents shall remain sealed unless otherwise ordered by the court.

(d) **Sealing and Unsealing of Plea Agreements**

(1) Until it is accepted by the court, a plea agreement is in the nature of an unaccepted offer of terms between parties. In addition to the findings of Section (c) above, making a plea agreement public before it has been accepted may lead to publicity that would tend to prejudice a defendant who decides to exercise his right to trial by making it more difficult to select jurors who have not formed an opinion about the case. Such publicity may also provide details of the case pertinent to co-defendants who have not pled, thus prejudicing them. Therefore, plea agreements shall be filed under seal.

(2) The plea agreement shall be unsealed when the terms and conditions of the plea agreement are accepted absent a further court order finding that there is an overriding policy interest in keeping that particular plea agreement sealed and providing findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered. The routine unsealing of sealed plea agreements is intended to serve the right of public access to criminal case documents.

(e) **Sealed Addendums to Plea Agreements**. Every plea agreement in this court shall have an addendum that is sealed (*see* Section (c) 6 above). The addendum will either state "no provisions are included in this addendum," or it will contain specific provisions dealing with possible reductions in sentence in return for the defendant's substantial assistance to the government. This will allow each plea agreement to be unsealed upon sentencing without prejudicing or endangering a cooperating defendant or the defendant's family or other informants and defendants.

(f) In those instances where the court orders an entire criminal case sealed, case documents shall be e-mailed to the following addresses for filing by the relevant divisional clerk's office:

Beaumont	bmtcrimdocs@txed.uscourts.gov
Lufkin	lufcrimdocs@txed.uscourts.gov
Marshall	marcrimdocs@txed.uscourts.gov
Sherman	shrcrimdocs@txed.uscourts.gov
Texarkana	texcrimdocs@txed.uscourts.gov

Tyler tylcrimdocs@txed.uscourts.gov

(g) Defendants proceeding *pro se* shall submit all sealed criminal case documents in paper format to the clerk's office for filing.

(h) Unless otherwise ordered by the presiding judge, counsel filing a document under seal must send a paper copy of that document to the presiding judge's chambers. The paper copy should be sent directly to the judge's chambers, not to the clerk's office.

LOCAL RULE CR-49.1 Privacy Protection for Filings Made with the Court

(a) **Electronic Filing of Transcripts by Court Reporters**. Any transcript of criminal proceedings in this court filed by a court reporter or transcriber shall be filed electronically, including a "Notice of Filing of Official Transcript." The clerk will post a "model notice" for the court reporter or transcriber's use on the court's web site. Upon request, the clerk shall make an electronic version of any unsealed transcript available for public inspection without charge at the clerk's office. *See* 28 U.S.C. § 753(b).

(b) **Availability of Transcripts of Court Proceedings**. Electronically-filed transcripts of criminal court proceedings are subject to the following rules:

(1) A transcript provided to a court by a court reporter or transcriber will be available at the clerk's office for inspection for a period of ninety days after it is electronically filed with the clerk. During the ninety-day inspection period, access to the transcript in CM/ECF is limited to the following users: (a) court staff; (b) public terminal users; (c) attorneys of record or parties who have purchased the transcript from the court reporter or transcriber; and (d) other persons as directed by the court. Court staff may not copy or print transcripts for a requester during the ninety-day inspection period.

(2) During the ninety-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will also be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.

(3) Within seven days of the filing of the transcript in CM/ECF, each party wishing to redact a transcript must inform the court, by filing the attached "Notice of Intent to Request Redaction," of the party's intent to redact personal data identifiers from the transcript as required by Fed. R. Crim. P. 49.1. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers is not necessary.

(4) If redaction is requested, a party is to submit to the court reporter or transcriber and file with the court, within twenty-one days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers

to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal identifiers listed in Fed. R. Crim. P. 49.1(a). If an attorney wishes to redact additional information, he or she may make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion.

(5) The court reporter or transcriber must, within thirty-one days of the filing of the transcript, or longer if the court so orders, perform the requested redactions and file a redacted version of the transcript with the clerk. Redacted transcripts are subject to the same access restrictions as outlined above during the initial ninety days after the first transcript has been filed. The original unredacted electronic transcript shall be retained by the clerk as a restricted document.

(6) If, after the ninety-day period has ended, there are no redaction documents or motions linked to the transcript, the clerk will remove the public access restrictions and make the unredacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system.

(7) If, after the ninety-day period has ended, a redacted transcript has been filed with the court, the clerk will remove the access restrictions as appropriate and make the redacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system or from the court reporter or transcriber.

LOCAL RULE CR-55 Records

(a) **Submission of Hearing/Trial Exhibits**. The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without a court order. The clerk shall return to the party any physical exhibits not complying with this rule. Exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. Additional copies of trial exhibits may be submitted in binders for the court's use.

(b) **Post-trial/hearing Exhibit Procedures**. The parties shall provide letter-sized copies of any documentary, physical, or oversized exhibit to the court prior to the conclusion of a hearing/trial. At the conclusion of a hearing/trial, the parties shall provide the courtroom deputy with PDF copies of all exhibits that were admitted by the court, unless otherwise ordered. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

LOCAL RULE CR-59 Matters Before a Magistrate Judge

(a) **Powers and Duties of a United States Magistrate Judge in Civil Cases**. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(b) **Objections to Non-dispositive Matters — 28 U.S.C. § 636(b)(1)(A)**. An objection to a

magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. A party may respond to another party's objections within fourteen days after being served with a copy; however, the court need not await the filing of a response before ruling on an objection. No further briefing is allowed absent leave of court.

(c) **Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B)**. Objections to reports and recommendations and any response thereto shall not exceed eight pages. No further briefing is allowed absent leave of court.

(d) **Assignment of Matters to Magistrate Judges**. The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.

SECTION III: ATTORNEYS

LOCAL RULE AT-1 Admission to Practice

(a) An attorney who has been admitted to practice before the Supreme Court of the United States, a United States Court of Appeals, a United States District Court, or the highest court of a state, is eligible for admission to the bar of this court. He or she must be of good moral and professional character and must be a member in good standing of the state and federal bars in which he or she is licensed.

(b) Each applicant shall file an application on a form prescribed by the court. If the applicant has previously been subject to disciplinary proceedings, full information about the proceedings, the charges, and the result must be given.

(1) A motion for admission made by a member in good standing of the State Bar of Texas or the bar of any United States District Court shall accompany the completed admission form. The movant must state that the applicant is competent to practice before this court and is of good personal and professional character.

(2) The applicant must state in the application that he or she has read Local Rule AT-3, the "Standards of Practice to be Observed by Attorneys," and the local rules of this court and that he or she will comply with the standards of practice adopted in Local Rule AT-3 and with the local rules.

(3) The applicant must provide with the application form an oath of admission signed in the presence of a notary public on a form prescribed by the court. The completed application for admission, motion for admission, and oath of admission shall be submitted to the court, along with the admission fee required by law and any other fee required by the court. Upon investigation of the fitness, competency, and qualifications of the applicant, the completed application form may be granted or denied by the clerk subject to the oversight of the chief judge.

(c) The clerk shall maintain a complete list of all attorneys who have been admitted to practice before the court.

(d) An attorney who is not admitted to practice before this court may appear for or represent a party in any case in this court only upon an approved application to appear pro hac vice. When an attorney who is not a member of the bar of this court appears in any case before this court, he or she shall first submit electronically an application to appear pro hac vice with the clerk. The applicant must read and comply with Local Rule AT-3, the "Standards of Practice to be Observed by Attorneys," and the local rules of this court. The application shall be made using the form that is available on the court's website and must be signed by the applicant personally. Detailed instructions on how to e-file the application appear on the court's website, located at www.txed.uscourts.gov. Such application also shall be accompanied by a $100.00 local fee, which must be paid electronically. Any attachments to pro hac vice applications will be handled as electronic sealed documents by the clerk's office. The application shall be acted

upon with dispatch by the clerk on the court's behalf. The clerk shall notify the applicant as soon as possible after the application is acted upon.

(e) **Federal Government Attorneys**. No bar admission fees shall be charged to attorneys who work for the United States government, including Assistant United States Attorneys, Assistant Federal Public Defenders, CJA Panel attorneys, and current law clerks serving this court. The clerk's office has no authority to waive bar admission fees for attorneys who work for state, county, or city governments.

LOCAL RULE AT-2 Attorney Discipline

(a) **Generally**. The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this bar.

(b) **Disciplinary Action Initiated in Other Courts**.

(1) Except as otherwise provided in this subsection, a member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements, or voluntary resignation unrelated to a disciplinary proceeding or problem. This rule shall include, but is not limited to, instances where an attorney: (A) is disbarred, (B) is suspended, (C) is removed from the roll of active attorneys, (D) resigns in lieu of discipline, (E) has his or her pro hac vice status revoked as a result of misconduct, or (F) has any other discipline affecting his or her right to practice law imposed, by agreement or otherwise, as a result of the attorney's failure to adhere to any applicable standard of professional conduct.

(2) **Procedure.**

(A) If it appears that there exists a ground for discipline set forth in paragraph (b)(1) above, the clerk shall serve a notice and order upon the attorney concerned, such order to become effective thirty days after the date of service, imposing identical discipline in this district.

(B) Within twenty-one days of service of the notice and order upon the attorney, the attorney may file a motion for modification or revocation of the order. Any such motion must set forth with specificity the facts and principles relied upon by the attorney as showing good cause why a different disposition should be ordered by this court. The motion must also identify all cases currently

pending in the Eastern District of Texas where the attorney has filed an appearance. For each matter, the motion should identify the attorney's client(s). The timely filing of such a motion will stay the effectiveness of the order until further order by this court.

(C) If the attorney concerned files a motion seeking modification or revocation of the order, the matter shall be assigned to the chief judge, or a judge designated by the chief judge.

(D) Discipline shall be imposed under this section unless the attorney concerned establishes that: (i) the procedure followed in the other jurisdiction deprived the attorney of due process, (ii) the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction, (iii) the imposition of the identical discipline would result in a grave injustice, (iv) the misconduct established by the other jurisdiction warrants substantially different discipline in this court, or (v) the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court.

(E) As soon as practicable, the assigned judge shall consider the attorney's motion for modification or revocation on written submission. If good cause is not established, the judge shall enter an order directing that the clerk of the court may proceed to impose discipline set forth in the order described in paragraph AT-2(b)(2)(A) above or take other such action as justice and this rule may require. If the judge determines it is appropriate to hold a hearing, the judge may direct such a hearing pursuant to paragraph (b)(3) below.

(3) **Hearing.** If the judge determines that a hearing is appropriate, the concerned attorney shall have the right to counsel and at least fourteen days' notice of the date of the hearing. Prosecution of the reciprocal discipline may be conducted by an attorney specially appointed by the court. Costs of the prosecuting attorney and any fees allowed by the court shall be paid from the attorney admission fund.

(4) **Duty of Attorney to Report Discipline.** A member of this bar who has lost the right to practice law before any state or federal court, either permanently or temporarily, must advise the clerk of that fact within thirty days of the effective date of the disciplinary action. For purposes of this rule, "disciplinary action" includes, but is not limited to, the circumstances set forth in paragraph AT-2(b)(1) above. The clerk will thereafter proceed in accordance with this rule. Absent excusable neglect, an attorney's failure to comply with this subsection shall waive that attorney's right to contest the imposition of reciprocal discipline.

(c) **Conviction of a Crime**. A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.

(d) **Disciplinary Action Initiated in this Court**.

(1) **Grounds for Disciplinary Action**. This court may, after an attorney has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any attorney:

(A) for conduct unbecoming a member of the bar;

(B) for failure to comply with these local rules or any other rule or order of this court;

(C) for unethical behavior;

(D) for inability to conduct litigation properly; or

(E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) **Disciplinary Procedures**.

(A) When it is shown to a judge of this court that an attorney has engaged in conduct which might warrant disciplinary action involving suspension or disbarment, the judge receiving the information shall bring the matter to the attention of the chief judge, who will poll the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the disciplinary matter will be assigned to the chief judge, or a judge designated by the chief judge, who will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing before the chief judge or a judge designated by the chief judge, if requested, or upon expiration of the time prescribed for a response if no response is made, the chief judge or a judge designate by the chief judge, shall enter an appropriate order.

(B) At any hearing before the chief judge or a judge designated by the chief judge, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time of the hearing and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

(e) **Notification of Disciplinary Action**. Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the United States Court of Appeals for the Fifth Circuit, and the National Discipline Data Bank operated by the American Bar Association.

(f) **Reinstatement**. Except for suspensions as reciprocal discipline pursuant to paragraph AT-2(b), any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension, provided that the bar membership fee required by Local Rule AT-1(b)(3) has been paid. Any lawyer who was suspended as reciprocal discipline pursuant to paragraph AT-2(b) may apply, in writing, at the end of the period of suspension imposed by this court. In the application for reinstatement, the attorney shall advise the court of the status of the attorney's right to practice before the jurisdiction giving rise to reciprocal discipline in this court. The attorney shall also make a full disclosure of any disciplinary actions that may have occurred in other federal or state courts since the imposition of reciprocal discipline by this court. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

LOCAL RULE AT-3 Standards of Practice to be Observed by Attorneys

Attorneys who appear in civil and criminal cases in this court shall comply with the following standards of practice in this district:[4]

(a) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

(b) A lawyer owes candor, diligence, and utmost respect to the judiciary.

(c) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

(d) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

(e) Lawyers should treat each other, the opposing party, the court, and court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(f) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(g) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor ward opposing

[4] The standards enumerated here are set forth in the *en banc* opinion in *Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n.*, 121 F.R.D. 284 (N.D. Tex. 1988).

lawyers.

(h) A lawyer should not use any form of discovery or the scheduling of discovery as a means of harassing opposing counsel or counsel's client.

(i) Lawyers will be punctual in communications with others and in honoring scheduled appearances and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

(j) If a fellow member of the bar makes a just request for cooperation or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. The court is not bound to accept agreements of counsel to extend deadlines imposed by rule or court order.

(k) Effective advocacy does not require antagonistic or obnoxious behavior, and members of the bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

(l) The court also encourages attorneys to be familiar with the Codes of Pretrial and Trial Conduct promulgated by the American College of Trial Lawyers, which can be found on the court's website, located at txed.uscourts.gov, and to conduct themselves accordingly.

SECTION IV: ADMIRALTY RULES

LOCAL ADMIRALTY RULE (a) Authority and Scope

(a)(1) Authority. The local admiralty rules of the United States District Court for the Eastern District of Texas are promulgated by a majority of the judges as authorized by and subject to the limitation of Federal Rule of Civil Procedure 83 (Federal Rule or Rules).

(a)(2) Scope. The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

(a)(3) Citation. The local admiralty rules may be cited by the letters "LAR" and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

(a)(4) Definitions. As used in the Local Admiralty Rules, the word "Rule" followed by a numeral (*e.g.*, Rule 12) means a Federal Rule of Civil Procedure; the word "Rule" followed by a capital letter (*e.g.*, Rule C) means a Supplemental Rule for Certain Admiralty and Maritime Claims; the word "court" means the district court issuing these LARs; the term "judicial officer" means the United States district judge or a United States magistrate judge; the word "clerk" means the clerk of the district court and includes deputy clerks of court; the word "Marshal" means the United States Marshal and includes deputy Marshals; the word "keeper" means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and the term "substitute custodian" means the individual or entity who, upon motion and order of the court, assumes the duties of the Marshal or keeper with respect to the vessel or other property arrested or attached.

(a)(5) Bonds. When a bond is posted under the Local Admiralty Rules for any reason, it should be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.

LOCAL ADMIRALTY RULE (b) Maritime Attachment and Garnishment

(b)(1) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

LOCAL ADMIRALTY RULE (c) Actions in Rem: Special Provisions

(c)(1) Intangible Property. The summons to show cause why property should not be deposited in court issued pursuant to Supplemental Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than seven days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the control of the court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk of the court the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6)(a) why the property should not be delivered to the court.

(c)(2) Publication of Notice of Action and Arrest. The notice required by Rule C(4) shall be published at least once in a newspaper named in LAR (g)(2), and plaintiff's attorney shall file with the clerk a copy of the notice as it was published. The notice shall contain:

(A) The court, title, and number of the action;
(B) The date of the arrest;
(C) The identity of the property arrested;
(D) The name, address, and telephone number of the attorney for plaintiff;
(E) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the clerk and serve it on the attorney for plaintiff within fourteen days after publication;
(F) A statement that an answer to the complaint must be filed and served within twenty-one days after filing the statement of ownership interest in the property or right of possession, and that otherwise, default may be entered and condemnation ordered;
(G) A statement that applications for intervention under Federal Rule 24 by persons asserting maritime liens or other interests shall be filed within thirty days after publication; and
(H) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

(c)(3) Default In Action In Rem.

(A) Notice Required. A party seeking a default judgment in an action in rem must satisfy the judge that due notice of the action and arrest of the property has been given:
(1) By publication as required in LAR (c)(2), and
(2) By service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and
(3) By mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

(B) Persons with Recorded Interests.
(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.
(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.
(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c)(4) Entry of Default and Default Judgment. After the time for filing an answer has expired, the plaintiff may move for entry of default under Federal Rule 55(a). Default will be entered upon showing that:

(A) Notice has been given as required by LAR (c)(3)(A); and
(B) Notice has been attempted as required by LAR (c)(3)(B), where appropriate; and
(C) The time to answer by claimants of ownership to or possession of the property has expired; and
(D) No answer has been filed or no one has appeared to defend on behalf of the property.

The plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

LOCAL ADMIRALTY RULE (d) Possessory, Petitory, and Partition Actions

(d)(1) Return Date. In a possessory action under Rule D, a judicial officer may order that the statement of interest and answer be filed on a date earlier than twenty-one days after arrest. The order may also set a date for expedited hearing of the action.

LOCAL ADMIRALTY RULE (e) Actions in Rem and Quasi in Rem: General Provisions

(e)(1) Itemized Demand for Judgment. The demand for judgment in every complaint filed under Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Rule E(5)(a) may be based upon these allegations.

(e)(2) Salvage Action Complaints. In an action for salvage award, the complaint shall allege the dollar value of the vessel, cargo freight, and other property salved or other basis for an award, and the dollar amount of the award sought.

(e)(3) Verification of Pleadings. Every complaint in Rule B, C, and D actions shall be verified upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746 by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized representative thereof; and state that the affiant or declarant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized representative, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

(e)(4) Review by Judicial Officer. Unless otherwise required by the judicial officer, the review of complaints and papers called for by Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment, or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Rules B and C shall consist of an affidavit or a declaration pursuant to 28 § 1746 describing in detail the facts establishing the exigent circumstances.

(e)(5) Return of Service. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the court under Rules B or C who has served process of maritime attachment and garnishment or a warrant of arrest that seized property shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (*e.g.*, personal delivery), and the address, date, and time of service.

(e)(6) Property in Possession of United States Officer. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will

deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

(e)(7) Security for Costs. In an action under the Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $500. The party so ordered shall post the security within seven days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the court. A party may move for an order increasing the amount of security for costs.

(e)(8) Adversary Hearing. The adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer within three days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

(e)(9) Appraisal. An order for appraisal of property so that security may be given or altered will be entered upon motion. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee shall be paid in the first instance by the moving party, but it is taxable as an administrative cost of the action.

(e)(10) Security Deposit for Seizure of Vessels. The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit a sum deemed sufficient by the Marshal to cover the expenses of the Marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The security deposit for seizure of a vessel or property aboard a vessel is $5,000 if there is a substitute custodian, and $10,000 if the vessel or property is to remain in the custody of the Marshal. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time at the Marshal's request to cover estimated expenses. A party who fails to advance such additional costs as required by the Marshal may not participate further in the proceedings except by order of the court. The Marshal may, upon notice to all parties, petition the court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within three days after the initial request.

(e)(11) Intervenor's Claims.

(A) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted

therefor, anyone having a claim against the vessel or property is required to present it by filing an intervening complaint and obtain a warrant of arrest, and not by filing an original complaint, unless otherwise ordered by a judicial officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as required by LAR (e)(10), but will receive the funds back, less the intervenor's share of the Marshal's fees and expenses as stated in LAR (e)(11)(B).

(B) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims asserted against the property. If any party plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

(e)(12) Custody of Property.

(A) Safekeeping of Property. When a vessel or other property is brought to the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the court. Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the fee, if any, to be charged by the proposed substitute custodian, the location of the vessel during the period of custody, and the proposed insurance coverage.

(B) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and in maintaining the court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and where possible shall be named as an additional insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor.

The premiums charged for the liability insurance shall be paid in the first instance by the initial party obtaining the arrest and holding of the property, but are taxable as administrative costs of the action while the vessel, cargo, or other property is in custody of the court.

(C) (i) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling will cease unless an order of the court is received by the Marshal. No movement of or repairs to the vessel shall take place without order of the court. The applicant for an order under this rule shall give notice to the Marshal and to all parties of record.

(ii) Insurance. If an applicant shows adequate insurance to indemnify the Marshal for liability, the court may order the Marshal to permit cargo handling, repairs, or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The judicial officer will require that adequate insurances on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(D) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment a an expense of administration shall submit an invoice to the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

(e)(13) Sale of Property.

(A) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published on at least four days, between three and thirty-one days prior to the day of the sale.

(B) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:

(i) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is $1000, or less.

(ii) If the bid exceeds $1,000, the bidder shall immediately pay a deposit of at least $1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three days.

(iii) If an objection to the sale is filed within the period in LAR (e)(13)(F), the bidder is excused from paying the balance of the purchase price until three days after the sale is confirmed.

(iv) Payment shall be made by certified check or by cashier's check.

(C) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(D) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, and the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, the balance being retained in the registry of the court awaiting its order.

(E) Report of the Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the court setting forth the notice given of: the fact of sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information.

(F) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. Payment to the Marshal shall be by certified check or cashier's check. The court shall hold a hearing on the confirmation of the sale.

(G) Confirmation of Sale. If no objection to the sale has been filed, the sale shall be confirmed by order of the court no sooner than three days nor later than five days from the court's receipt of the Marshal's written report. The Marshal shall transfer title to the purchaser upon the order of the court.

(H) Disposition of Deposits.

(i) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(ii) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(e)(14) Presentation of Matters. If the judge to whom a case has been assigned is not readily available, any matter under the Local Admiralty Rules may be presented to any other judge in the district without reassigning the case.

LOCAL ADMIRALTY RULE (f) Limitation of Liability

(f)(1) Security for Costs. The amount of security for costs under Rule F(1) shall be $1,000, and security for costs may be combined with the security for value and interest unless otherwise ordered.

(f)(2) Order of Proof at Trial. In an action where vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

LOCAL ADMIRALTY RULE (g) Special Rules

(g)(1) Newspapers for Publishing Notices. Unless otherwise ordered by the court, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspaper[s] of general circulation in the District:

Beaumont Enterprise

(g)(2) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

SECTION V: PATENT RULES

1. SCOPE OF RULES

LOCAL PATENT RULE 1-1 Title

These are the Rules of Practice for Patent Cases before the Eastern District of Texas. They should be cited as "P. R. __."

LOCAL PATENT RULE 1-2 Scope and Construction

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in P. R. 4-6 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Civil Local Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Patent Rules. The deadlines set forth in these rules may be modified by Docket Control Order issued in specific cases.

LOCAL PATENT RULE 1-3 Effective Date

These Patent Rules shall take effect on February 22, 2005 and shall apply to any case filed thereafter and to any pending case in which more than 9 days remain before the Initial Disclosure of Asserted Claims is made. The parties to any other pending civil action shall meet and confer promptly after February 22, 2005, for the purpose of determining whether any provision in these Patent Rules should be made applicable to that case. No later than 7 days after the parties meet and confer, the parties shall file a stipulation setting forth a proposed order that relates to the application of these Patent Rules. Unless and until an order is entered applying these Patent Local Rules to

any pending case, the Rules previously applicable to pending patent cases shall govern.

2. GENERAL PROVISIONS

LOCAL PATENT RULE 2-1 Governing Procedure

(a) Initial Case Management Conference. Prior to the Initial Case Management Conference with the Court, when the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the Case Management Statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

(1) Proposed modification of the deadlines provided for in the Patent Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(2) Whether the Court will hear live testimony at the Claim Construction Hearing;

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

(4) The order of presentation at the Claim Construction Hearing; and

(5) The scheduling of a Claim Construction Prehearing Conference to be held after the Joint Claim Construction and Prehearing Statement provided for in P. R. 4-3 has been filed.

(6) Whether the court should authorize the filing under seal of any documents containing confidential information.

(b) Further Case Management Conferences. To the extent that some or all of the matters provided for in P. R. 2-1 (a)(1)-(5) are not resolved or decided at the Initial Case Management Conference, the parties shall propose dates for further Case Management Conferences at which such matters shall be decided.

(c) **Electronic Filings.** All patents attached as exhibits to any filing submitted electronically shall be in searchable PDF format. Any other documents attached as exhibits to any filing submitted electronically should be in searchable PDF format whenever possible.

LOCAL PATENT RULE 2-2 Confidentiality

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the Court has not entered a protective order, until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential - Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party 5 days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this local rule shall keep it confidential and use it only for purposes of litigating the case.

LOCAL PATENT RULE 2-3 Certification of Initial Disclosures

All statements, disclosures, or charts filed or served in accordance with these Patent Rules must be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

LOCAL PATENT RULE 2-4 Admissibility of Disclosures

Statements, disclosures, or charts governed by these Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures

provided for in P. R. 4-1 and 4-2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Rules must be taken.

LOCAL PATENT RULE 2-5 Relationship to Federal Rules of Civil Procedure

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Rules. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Patent Rules:

(a) Requests seeking to elicit a party's claim construction position;

(b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

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

LOCAL PATENT RULE 2-6 Assignment of Related Cases

Separately filed cases related to the same patent shall be assigned to the same judge, i.e., the judge assigned to the first related case.

3. PATENT INITIAL DISCLOSURES

LOCAL PATENT RULE 3-1 Disclosure of Asserted Claims and Infringement Contentions

Not later than 10 days before the Initial Case Management Conference with the Court, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

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

(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 must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

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

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

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

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

LOCAL PATENT RULE 3-2 Document Production Accompanying Disclosure

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must 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, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(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 patent in suit or the priority date identified pursuant to P. R. 3-1(e), whichever is earlier; and

(c) A copy of the file history for each patent in suit.

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

LOCAL PATENT RULE 3-3 Invalidity Contentions

Not later than 35 days after the Initial Case Management Conference with the Court, each party opposing a claim of patent infringement, shall serve on all parties its "Invalidity Contentions" which must contain the following information:

(a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art sales or public disclosures under pre-AIA 35 U.S.C. § 102(b) / post-AIA 35 U.S.C. § 102(a)(1) shall be identified by specifying the item offered for sale or publicly used or the information known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under pre-AIA 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under pre-AIA 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). Prior art references under post-AIA 35 U.S.C. § 102(a)(1) showing that the claimed invention was otherwise available to the public shall be identified by specifying the form and nature of the reference, the manner in which the reference was made public, and the date on which the reference was made public;

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(c) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112 ¶ 6, 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 indefiniteness under 35 U.S.C. § 112 ¶ 2 or enablement or written description under 35 U.S.C. § 112 ¶ 1 of any of the asserted claims.

LOCAL PATENT RULE 3-4 Document Production Accompanying Invalidity Contentions

With the "Invalidity Contentions," the party opposing a claim of patent infringement must 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 P. R. 3-1(c) chart; and

(b) A copy of each item of prior art identified pursuant to P. R. 3-3(a) which 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 must be produced.

LOCAL PATENT RULE 3-5 Disclosure Requirement in Patent Cases for Declaratory Judgment

(a) Invalidity Contentions If No Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, P. R. 3-1 and 3-2 shall not apply unless and until a claim for patent

infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than 10 days after the defendant serves its answer, or 10 days after the Initial Case Management Conference, whichever is later, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to P. R. 3-3 and produce or make available for inspection and copying the documents described in P. R. 3-4. The parties shall meet and confer within 10 days of the service of the Invalidity Contentions for the purpose of determining the date on which the plaintiff will file its Final Invalidity Contentions which shall be no later than 50 days after service by the Court of its Claim Construction Ruling.

(b) Applications of Rules When No Specified Triggering Event. If the filings or actions in a case do not trigger the application of these Patent Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Rules to the case.

(c) Inapplicability of Rule. This P. R. 3-5 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint for infringement of the same patent.

LOCAL PATENT RULE 3-6 Amending Contentions

(a) Leave not required. Each party's "Infringement Contentions" and "Invalidity Contentions" shall be deemed to be that party's final contentions, except as set forth below.

> **(1)** If a party claiming patent infringement believes in good faith that the Court's Claim Construction Ruling so requires, not later than 30 days after service by the Court of its Claim Construction Ruling, that party may serve "Amended Infringement Contentions" without leave of court that amend its "Infringement Contentions" with respect to the information required by P. R. 3-1(c) and (d).
>
> **(2)** Not later than 50 days after service by the Court of its Claim Construction Ruling, each

party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" without leave of court that amend its "Invalidity Contentions" with respect to the information required by P. R. 3-3 if:

(A) a party claiming patent infringement has served "Amended Infringement Contentions" pursuant to P. R. 3-6(a)(1), or

(B) the party opposing a claim of patent infringement believes in good faith that the Court's Claim Construction Ruling so requires.

(b) Leave required. Amendment or supplementation of any Infringement Contentions or Invalidity Contentions, other than as expressly permitted in P. R. 3-6(a), may be made only by order of the Court, which shall be entered only upon a showing of good cause.

LOCAL PATENT RULE 3-7 Opinion of Counsel Defenses

By the date set forth in the Docket Control Order, each party opposing a claim of patent infringement that will rely on an opinion of counsel as part of a defense shall:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

(b) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of this P. R. 3-7 shall not be permitted to rely on an opinion of counsel as part of a defense absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

LOCAL PATENT RULE 3-8 Disclosure Requirements for Patent Cases Arising Under 21 U.S.C. § 355 (Hatch-Waxman Act)

The following provision applies to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (commonly referred to as "the Hatch-Waxman Act"). This provision takes precedence over any conflicting provisions in P.R. 3-1 to 3-5 for all cases arising under 21 U.S.C. § 355.

(a) Upon the filing of a responsive pleading to the complaint, the Defendant(s) shall produce to Plaintiff(s) the entire Abbreviated New Drug Application or New Drug Application that is the basis of the case in question.

(b) Not more than 7 days after the Initial Case Management Conference, Plaintiff(s) must identify the asserted claims.

(c) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for their "Invalidity Contentions" for any patents referred to in Defendant(s) Paragraph IV Certification. This written basis shall contain all disclosures required by P.R. 3-3 and shall be accompanied by the production of documents required by P.R. 3-4.

(d) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for any defense of non-infringement for any patent referred to in Defendant(s) Paragraph IV Certification. This written basis shall include a claim chart identifying each claim at issue in the case and each limitation of each claim at issue. The claim chart shall specifically identify for each claim those claim limitation(s) that are literally absent from the Defendant(s) allegedly infringing Abbreviated New Drug Application or New Drug Application. The written basis for any defense of non-infringement shall also be accompanied by the production of any document or thing that the Defendant(s) intend to rely upon in defense of any infringement allegations by Plaintiff(s).

(e) Not more than 45 days after the disclosure of the written basis for any defense of non-infringement as required by P.R. 3-8(c), Plaintiff(s) shall provide Defendant(s) with a "Disclosure of Asserted Claims and Infringement Contentions," for all patents referred to in Defendant(s) Paragraph IV Certification, which shall contain all disclosures required by P.R. 3-1 and shall be accompanied by the production of documents required by P.R. 3-2.

(f) Each party that has an ANDA application pending with the Food and Drug Administration ("FDA") that is the basis of the pending case shall: (1) notify the FDA of any and all motions for injunctive relief no later than three business days after the date on which such a motion is filed; and (2) provide a copy of all correspondence between itself and the FDA pertaining to the ANDA application to each party asserting infringement, or set forth the basis of any claim of privilege for such correspondence, no later than seven days after the date it sends or receives any such correspondence.

(g) Unless informed of special circumstances, the Court intends to set all Hatch-Waxman cases for final pretrial hearing at or near 24 months from the date of the filing of the complaint.

4. CLAIM CONSTRUCTION PROCEEDINGS

LOCAL PATENT RULE 4-1 Exchange of Proposed Terms and Claim Elements for Construction

(a) Not later than 10 days after service of the "Invalidity Contentions" pursuant to P. R. 3-3, each party shall simultaneously exchange a list of claim terms, phrases, or clauses which that party contends should be construed or found indefinite by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(f).

(b) The parties shall thereafter meet and confer for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

LOCAL PATENT RULE 4-2 Exchange of Preliminary Claim Constructions and Extrinsic Evidence

(a) Not later than 20 days after the exchange of "Proposed Terms and Claim Elements for Construction" pursuant to P. R. 4-1, the parties shall simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties collectively have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element which any party contends is governed by 35 U.S.C. § 112(f), identify the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support their respective claim constructions or indefiniteness positions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties shall also provide the identity and a brief description of the substance of that witness' proposed testimony.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

LOCAL PATENT RULE 4-3 Joint Claim Construction and Prehearing Statement

(a) Not later than 60 days after service of the "Invalidity Contentions," the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information**:**

(1) The construction of those claim terms, phrases, or clauses on which the parties agree;

(2) Each party's proposed claim construction or indefiniteness position for each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that position, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its position or to oppose any other party's position, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(3) The anticipated length of time necessary for the Claim Construction Hearing;

(4) Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing and the identity of each such witness; and

(5) A list of any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

(b) Each party shall also simultaneously serve a disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B(i)-(ii) or 26(a)(2)(C) for any expert on which it intends to rely to support its proposed claim construction or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

LOCAL PATENT RULE 4-4 Completion of Claim Construction Discovery

Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction and Prehearing Statement.

LOCAL PATENT RULE 4-5 Claim Construction Briefs

(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

(b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

(d) At least 10 days before the Claim Construction Hearing held pursuant to P.R. 4-6, the parties shall jointly file a claim construction chart.

> **(1)** Said chart shall have a column listing complete language of disputed claims with disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. The chart shall also include a fourth column entitled "Court's Construction" and otherwise left blank. Additionally, the chart shall also direct the Court's attention to the patent and claim number(s) where the disputed term(s) appear(s).
>
> **(2)** The parties may also include constructions for claim terms to which they have agreed. If the parties choose to include agreed constructions, each party's proposed construction columns shall state "[**AGREED**]" and the agreed construction shall be inserted in the "Court's Construction" column.
>
> **(3)** The purpose of this claim construction chart is to assist the Court and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements set forth in this rule, the parties are afforded substantial latitude in the chart's format so that they

may fashion a chart that most clearly and efficiently outlines the disputed terms and proposed constructions. Appendices to the Court's prior published and unpublished claim construction opinions may provide helpful guidelines for parties fashioning claim construction charts.

(e) Unless otherwise ordered by the Court, the page limitations governing dispositive motions pursuant to Local Rule CV-7(a) shall apply to claim construction briefing.

LOCAL PATENT RULE 4-6 Claim Construction Hearing

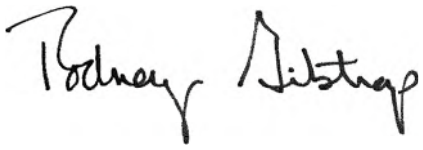
Subject to the convenience of the Court's calendar, two weeks following submission of the reply brief specified in P.R. 4-5(c), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

STANDING ORDER REGARDING READINESS FOR SCHEDULING CONFERENCE

The Court **ORDERS** the Plaintiff in each civil case file a notice that the case is ready for scheduling conference when all of the Defendants have either answered or filed a motion to transfer or dismiss. The notice shall be filed within five days of the last remaining Defendant's answer or motion. The notice shall include a list of any pending motions. For patent cases, the notice shall also include: (1) a list of any related cases previously filed in the Eastern District of Texas involving the same patent or patents; (2) the patent numbers for this case and any related case; and (3) the dates of any future *Markman* Hearing and/or Trial for related cases.

So ORDERED and SIGNED this 20th day of December, 2011.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING MOCK JURIES FOR CASES
ASSIGNED TO JUDGE RODNEY GILSTRAP AND JUDGE ROY S. PAYNE

WHEREAS: The venire for the trial of civil and criminal cases is drawn from the counties comprising the particular division for the Eastern District of Texas in which the cases are pending; and

WHEREAS: The parties to such cases, primarily complex civil cases, routinely conduct mock trials, focus groups, or similar studies in preparation for the trials of such cases; and

WHEREAS: Participation in such studies increases the risk that otherwise qualified venire members will be disqualified from jury service either through participation in such studies or other extrajudicial knowledge concerning the facts of the case or the law to be applied; and

WHEREAS: Such risk threatens the administration of justice.

IT IS THEREFORE ORDERED:

That in all cases assigned to United States District Judge Rodney Gilstrap or United States Magistrate Judge Roy S. Payne, the Court strongly discourages the parties from conducting mock jury trials, focus groups, or other similar studies in which any mock jurors or similar participants reside in the division where the case is pending.

IT IS FURTHER ORDERED:

That is cases in which such a study has been conducted, the following procedures shall apply:

The party or parties who commission the study shall retain, to the extent practicable, the name and address of each participant in the study. If the case is not disposed of by settlement or otherwise,

the party or parties who commissioned the study shall advise all other parties to the case, as well as the court, in writing, that such a study occurred. Such notice shall be provided at least ten (10) days before the pre-trial conference. Upon receipt of any jury list, the party or parties who commissioned the study shall immediately cross-reference the jury list with the identities of the participants and advise all other parties to the case and the court of any prospective juror who participated in any study. Before jury selection, the party or parties who commissioned the study shall provide the names and addresses of all participants in the study to the court *in camera*.

This Order shall apply to all cases assigned to either United States District Judge Rodney Gilstrap or United State Magistrate Judge Roy S. Payne regardless of the division within this district in which such cases were originally filed.

So ORDERED and SIGNED this 3rd day of February, 2012.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

EXEMPTION ORDER TO LOCAL RULE CV-5(a)(9)
RE COURTESY PAPER COPIES OF ELECTRONICALLY-FILED DOCUMENTS

In cases pending before the Honorable Rodney Gilstrap, the parties are exempt from complying with Local Rule CV-5(a)(9) which requires the filing party to provide the presiding judge with paper copies of all electronically-filed documents over five pages in length.

IT IS ORDERED that courtesy paper copies shall only be filed when specifically requested by the undersigned.

So ORDERED and SIGNED this 6th day of December, 2013.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING PROPER NOTIFICATION OF SETTLEMENT TO THE COURT

WHEREAS, consistency and uniformity in both the form and substance of the method of notification used by parties to advise the Court when a matter has been settled and resolved is of material benefit to the Court and promotes the Court's ability to monitor and manage its docket;

NOW, THEREFORE, IT IS ORDERED THAT promptly upon the settlement in principle of any case pending before this Court, whether such settlement is reached by formal mediation, privately between the parties or otherwise, the parties shall jointly file a motion with the Court styled as follows: Joint Motion To Stay All Deadlines and Notice of Settlement. Such joint motion shall affirmatively state that all matters in controversy between the parties have been settled, in principle, and shall request that the Court stay for some specific and reasonable period of time the unreached deadlines contained in the Court's Docket Control Order, or stay the entry of a Docket Control Order if one has yet to be entered, so that appropriate dismissal papers may be submitted. In most cases the Court will not afford more than thirty (30) days in which to submit dismissal papers but in exceptional cases the Court may grant a longer period for such submission. A motion indicating that the parties are communicating about settlement but one which stops short of an express indication that the matters in controversy have, in fact, settled will not ordinarily support or prompt from the Court an order staying the existing deadlines. Other filings (such as and for example only--a mere notice of settlement) shall not be adequate to comply with this order or to secure a stay of existing deadlines. Such noncompliant filings shall not support later requests to reset missed deadlines or otherwise amend the docket control order.

So ORDERED and SIGNED this 3rd day of June, 2014.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

STANDING ORDER REGARDING BILLS OF COSTS

IT IS ORDERED that before any party files a Motion for Bill of Costs, they should submit their proposed bill of costs to opposing counsel for their review in light of the applicable law. Further, if there are any areas of disagreement the parties shall meet, confer, and be prepared to compromise, making every effort to submit an "agreed" bill of costs to the Court. The Court is confident that, through meeting, conferring, and compromising on these specific matters, the parties should be able to resolve these matters without having to impose upon the Court's limited resources. However, if the parties have legitimate disputes on which they cannot agree, they shall file a motion—in accordance with Local Rule CV-54—indicating their areas of disagreement with specificity. In such case, the Court may elect to conduct a hearing on same at which time **LEAD TRIAL COUNSEL** will be **ORDERED** to appear and explain why these disputes and differences remain unresolved.

APPLICABLE LAW

Pursuant to Federal Rule of Civil Procedure 54(d), costs are to be awarded to the prevailing party as a matter of course, unless the Court directs otherwise. However, the provision of 28 U.S.C. §1920 limit the Court's discretion in taxing costs against the unsuccessful litigant. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-42 (1987). Although the prevailing party is entitled to its costs, the prevailing party must still demonstrate that its costs are recoverable under Fifth Circuit precedent, and the prevailing party should not burden the Court with costs that are clearly not recoverable under the law.

The statute permits the following recoverable costs:

(1) Fees of the clerk and marshal;

(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. A district court is permitted to decline to award costs listed in the statute, but may not award costs omitted from the statute. *Crawford*, 482 U.S. at 441-42.

Fees of the clerk and marshal

Private process server fees are not recoverable fees of the clerk and marshal under § 1920. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 257 (5th Cir. 1997)("As there was nothing exceptional about the parties or the nature of this case, the district court should have denied these unnecessary private service costs.").

Fees for printed or electronically recorded transcripts

Section 1920 was amended in 2008 to authorize recovery for "[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case." The trial court has great discretion to tax the costs of taking, transcribing, and reproducing depositions that are "necessarily obtained for use in the case." *Fogleman v. ARAMCO*, 920 F.2d 278, 285 (5th Cir. 1991); *Nissho-Iwai Co. v. Occidental Crude Sales*, 729 F.2d 1530, 1553 (5th Cir. 1984). Whether a deposition or copy was necessarily obtained for use in the case is a factual

determination to be made by the district court. *Fogleman*, 920 F.2d at 285-86 (citations omitted). The district court is accorded great latitude in this determination. *Id*. at 286.

Costs should not be disallowed merely because the deposition was not ultimately used at trial or in connection with a dispositive motion. The costs of a deposition are allowed "if the taking of the deposition is shown to have been reasonably necessary in light of the facts known to counsel at the time it was taken." *Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087, 1099 (5th Cir. 1982), *modified en banc*, 701 F.2d 542 (5th Cir. 1983), *overruled on other grounds by Int'l Woodworkers of Am. v. Champion Int'l Corp.*, 790 F.2d 1174 (5th Cir. 1986); *see also Stearns Airport Equip. Co., v. FMC Corp.*, 170 F.3d 518, 536 (5th Cir. 1999).

The 2008 amendment to this provision recognizes that costs may be taxed for "electronically recorded transcripts." Accordingly, the Fifth Circuit has now implicitly recognized that costs may be allowed for video tapes of depositions. *See S&D Trading Academy, LLC v. AAFIS, Inc.*, 336 Fed. Appx. 443, 450-52 (5th Cir. 2009) (unpublished); *see also SynQor, Inc. v. Artesyn Techs., Inc.*, 2011 U.S. Dist. LEXIS 112493, at *9-10 (E.D. Tex. September 29, 2011) (taxing videotape deposition costs in light of the 2008 amendment and *S&D Trading Academy*). Recoverable costs related to depositions typically include, but are not limited to: reporter's appearance fees, transcript costs, and videographer fees.

However, incidental costs associated with depositions, such as the cost of expedited delivery charges, ASCII disks, and parking, are generally not recoverable *See Harris Corp. v. Sanyo No. Am. Corp.*, 2002 WL 356755, at *3 (N.D. Tex. March 4, 2002); *Canion v. United States*, No. EP-03-CA-0347-FM, 2005 WL 2216881 at *3 (W.D. Tex. 2005).

Fees for exemplification and the costs of making copies

Costs of photocopies necessarily obtained for use in the litigation are recoverable upon proof of necessity. 28 U.S.C. § 1920(4); *Holmes v. Cessna Aircraft Co.* 11 F.3d 63, 64 (5th Cir. 1994). The party seeking costs need not "identify every xerox copy made for use in the course of legal proceedings." *Fogleman*, 920 F.2d at 286. However, it must demonstrate some connection between the costs incurred and the litigation. *Id.* The Court first determines whether the charges sought are reasonable in light of the litigation. Reasonable charges shall be allowed; however, non-specific copying and exemplification charges may be further reduced.[1] Charges for multiple copies of documents, attorney correspondence, and other such items are not recoverable. *Id*.

Electronic discovery costs are generally not allowed, including costs for document collection, document processing, and document hosting. Document scanning costs are allowed to the extent that they are reasonable and necessary for litigation. Electronic document conversion costs are allowed to the extent that they are necessary for use in the case. The Court's model ESI Order designates TIFF as the default format for document production. Parties that agree to such an arrangement shall have agreed that the costs of converting native documents to TIFF are taxable under Rule 54. However, in the event that the parties agree that native document production is acceptable (i.e., no conversion is necessary), the costs associated with converting native documents to TIFF (or any other format) shall not be recoverable. *See Eolas Techs. Inc. v. Adobe Sys. Inc.*, No. 6:09-cv-446 (E.D. Tex. July 20, 2012).

Miscellaneous fees

[1] For instance, a charge labeled "copying" is non-specific, while a charge labeled "copying Project X source code" is considered specific.

Miscellaneous expenses such as postage, facsimiles, electronic legal research, and travel expenses are not recoverable under § 1920. *See Home Depot U.S.A. v. Fed. Ins. Co.*, No. 4:02-CV-95, 2003 U.S. Dist. LEXIS 5492, at *5 (E.D. Tex. 2003) (Davis, J.); *see also Compton v. Taylor*, No. H-05-4116, 2006 U.S. Dist. LEXIS 43402 at *8 (S.D. Tex. 2006). Likewise, reimbursement for attorney travel and meals is not allowed. *Coats v. Penrod Drilling Corp.*, 5 F.3d 877, 892 (5th Cir. 1993). In addition, the Fifth Circuit has expressly held that mediation fees are not recoverable. *Mota v. Univ. of Tex. Houston Health Science Ctr.*, 261 F.3d 512, 530 (5th Cir. 2001).

This standing order shall be effective as of the date of signature by the Court and until such time, if any, as it is amended or rescinded by subsequent order.

So ORDERED and SIGNED this 2nd day of September, 2014.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING THE USE OF
LIVE TESTIMONY DURING CLAIM CONSTRUCTION PROCEEDINGS IN
CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP

WHEREAS, with regard to future claim construction hearings before this Court, it is assumed that the majority of such hearings shall be focused solely on the intrinsic record and will not require the Court to make subsidiary factual findings related to such constructions; however, the Court recognizes that in some cases the Court may be called upon to go beyond the intrinsic record only and such efforts may, on occasion, require the Court to act as a fact finder regarding certain subsidiary facts. Accordingly, IT IS ORDERED THAT without prior leave of this Court permitting a party to call witnesses as a part of any claim construction hearing (in person or by deposition), such live testimony will not be permitted at claim construction hearings before this Court. Without such leave, witness testimony for the purposes of claim construction shall be submitted solely by way of exhibits, such as sworn declarations, attached to a party's claim construction briefing. Leave to call live witnesses at claim construction hearings before this Court may be sought—by a party that has otherwise complied with the Court's rules—by filing a motion supported by a clear showing of good cause presented in detail. Such motions must also be filed in a timely manner that do not work a surprise or hardship upon opposing parties, their counsel, or the Court.

This Standing Order supplements but does not supersede the Rules of Practice for Patent Cases before the Eastern District of Texas and is not intended to alter the standard procedures for claim construction discovery.

So ORDERED and SIGNED this 26th day of May, 2015.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REQUIRING NOTICE OF
RELEVANT DETERMINATIONS FROM RELATED PROCEEDINGS IN
CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP

WHEREAS, a current and complete record is necessary to ensure the accuracy of this Court's rulings; and

WHEREAS, Counsel appearing before this Court, as officers of this Court, have an affirmative duty of Candor with the Court and opposing parties;

NOW, THEREFORE, the Court recognizes that in certain cases, a party in a case presently before this Court may be a party to other proceedings elsewhere that are factually related to motions before this Court in the present case. Additionally, the Court recognizes that these other proceedings may result in determinations that are directly relevant to a motion before this Court. Consequently, IT IS ORDERED THAT, once a party in a case presently before this Court becomes aware of a determination elsewhere from a related proceeding by an adjudicating body that the party reasonably believes is materially relevant to a pending motion before this Court, that party shall promptly provide notice of such relevant determination and identification of the related motion(s) by filing a formal notice with the Court within three (3) days.

By way of example only, and not limitation, should a party to a pending motion for stay before this Court that is based on a petition for *Inter Partes* Review, Covered Business Method Review, or Post Grant Review learn of a decision by the Patent Trial and Appeal Board ("PTAB") granting or denying the petition upon which the request for stay has been made, that party should notify this Court within three (3) days of learning of the same.

This Standing Order supplements but does not supersede the Rules of Practice for Cases before the Eastern District of Texas.

So ORDERED and SIGNED this 28th day of May, 2015.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING MOTIONS UNDER
35 U.S.C. § 101 AND ACCOMPANYING CERTIFICATIONS
IN CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP

WHEREAS, this Court recognizes that claim construction may be appropriate in properly deciding issues under 35 U.S.C. § 101 in certain cases and such may not be appropriate in other cases; and

WHEREAS, the Court, in seeking to efficiently manage its docket, believes such efficiency is enhanced by early input as to the propriety or lack thereof regarding claim construction prior to consideration of such motions;

NOW, THEREFORE, IT IS ORDERED THAT parties seeking to file pre-*Markman* hearing dispositive motions under 35 U.S.C. § 101 (that is: prior to entry of the Court's claim construction order) shall include, as a part of such motions, the following certification, completed and signed as follows and as may be appropriate in such case:

CERTIFICATE OF COMPLIANCE WITH THE COURT'S
35 U.S.C. § 101 MOTION PRACTICE ORDER

_____ The parties **agree** that prior claim construction is not needed to inform the Court's analysis as to patentability.

_____ The parties **disagree** on whether prior claim construction is not needed to inform the Court's analysis as to patentability.

/S/ Lead Counsel for Movant

The meet and confer process required in advance of properly making the above certification to the Court shall require one-on-one communication. As used herein, the term "one-on-one" communication shall mean that lead counsel for both sides shall diligently

communicate orally and directly with each other (in person or telephonically) with no others advising, interjecting, or otherwise participating in such communication. The requirement that lead counsel meet and confer "one-on-one" is intended to avoid an ineffective meet-and-confer process and to heighten the level of seriousness and attention devoted to this process. To the extent such certification reflects disagreement, the parties shall submit a joint letter containing not more than two (2) pages from each side (four pages total) to the Court within ten (10) days from the filing of the § 101 motion, setting forth their respective specifics surrounding such disagreement, including, in particular, any claim terms that the respondent believes need to be construed, why such is needed, and what intrinsic references support such position. Nothing included in such joint letter shall bind the parties as to the § 101 motion, future claim construction, or any other proceeding before the Court.

The Court shall exercise its inherent power to manage its docket by considering the parties' positions in this regard as it schedules and takes up such § 101 motions. Nothing herein shall necessitate advance leave of court to file such § 101 motions; but rather, compliance with this certification process is required as set forth above.

The clerk shall reject the filing of such pre-*Markman* motions when this certification process has not been met. These requirements do not apply to § 101 motions filed after the entry of a claim construction order.

This Standing Order supplements but does not supersede the Rules of Practice for Cases before the Eastern District of Texas; however, this order does replace that portion of current docket control orders which previously required leave of court to file a § 101 motion in advance of claim construction.

So ORDERED and SIGNED this 10th day of November, 2015.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING
DISMISSAL PAPERS IN CONNECTION WITH SETTLEMENT
IN CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP

WHEREAS, uniformity in both the form and substance of the ways and means employed by parties to notify the Court of an agreed upon dismissal is of material benefit to the Court and enhances the Court's ability to better monitor and manage its docket; and

NOW, THEREFORE, IT IS ORDERED THAT, once parties in a case have resolved their disputes and the parties have filed a Motion to Stay and Notice of Settlement as provided for in the standing orders of this Court and thereafter, the parties are at the stage of filing the appropriate dismissal papers, the parties shall file such dismissal papers styled as one of the following:

1) a Motion to Dismiss Pursuant to Rule 41(a)(2), with an accompanying proposed Order; or
2) a Stipulation of Dismissal Pursuant to Rule 41(a)(1)(A)(ii), signed by all parties who have appeared; or
3) a Notice of Dismissal Pursuant to Rule 41(a)(1)(A)(i), in which the plaintiff affirmatively represents that the defendant has not served upon the plaintiff either an answer or a motion for summary judgment.

Such parties shall not, under any circumstances, file their attempt at dismissal styled merely as a "Notice." Should the parties elect, within the applicable circumstances, to seek dismissal in any manner other than (1) above [a Motion to Dismiss Pursuant to Rule 41(a)(2)], they shall simultaneously deliver a courtesy copy of their filing to the Chambers of this Court. Attempts at

dismissal by means of a Motion to Dismiss Pursuant to Rule 41(a)(2) shall not require that a courtesy copy be delivered to Chambers.

This Standing Order supplements but does not supersede the Rules of Practice for Cases before the Eastern District of Texas.

So Ordered this

Feb 19, 2016

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL, TEXARKANA AND TYLER DIVISIONS

REGARDING CASES ASSIGNED TO
U. S. DISTRICT JUDGE RODNEY GILSTRAP AND
U. S. DISTRICT JUDGE ROBERT W. SCHROEDER III

STANDING ORDER REGARDING PROTECTION OF PROPRIETARY AND/OR CONFIDENTIAL INFORMATION TO BE PRESENTED TO THE COURT DURING MOTION AND TRIAL PRACTICE[1]

WHEREAS, consistency and uniformity in both the form and substance of the methods and procedures used by counsel to protect confidential and/or proprietary information presented during motion or trial practice is a meritorious goal and further;

WHEREAS, reasonable planning and steps by counsel to efficiently marshal such evidence in advance of the time for presentation will minimize the disruptions otherwise present in such protective measures during motion or trial practice is an additional meritorious goal and

WHEREAS, such conduct, and these orders for the implementation of the same, fall squarely within the Court's inherent power to manage its docket and oversee the fair presentation of evidence at all stages of the litigation process;

NOW, THEREFORE, IT IS ORDERED THAT :

1. Requests to seal or otherwise protect certain information of a confidential and/or proprietary nature from public disclosure during a hearing or trial should be made before the public disclosure of the information.

2. Any such request must demonstrate: a) that the information sought to be protected is of such a sensitive nature that its disclosure creates a risk of harm that outweighs the strong presumption in favor of public access to judicial proceedings; and b) that the parties have met and conferred in good faith concerning the manner in which the sensitive information will be presented at the hearing or at trial, with the goal of minimizing the need to seal the record and the courtroom.

3. Except for requests to redact information referenced in Fed. R. Civ. P. 5.2(a), requests to seal or protect information after its public disclosure at a hearing or trial must, in

addition to the preceding requirements, show good cause why the motion was not made in advance of the disclosure.

4. The terms of this Standing Order shall immediately apply to and supplement all active civil cases currently pending before the undersigned or that may otherwise be assigned to the undersigned hereafter.

SIGNED AND EFFECTIVE THIS 1st DAY OF JUNE, 2016.

U. S. DISTRICT JUDGE RODNEY GILSTRAP

U. S. DISTRICT JUDGE ROBERT W. SCHROEDER III

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[1] **Commentary**

Background

Since their adoption in 1937, the Federal Rules of Civil Procedure have required that at trial, the testimony of witnesses must be taken in open court. *See* Fed. R. Civ. P. 43. Courts have similarly recognized that "there is a strong presumption in favor of a common law right of public access to court proceedings." *See In re Violation of Rule 28(d)*, 635 F.3d 1352, 1356 (Fed. Cir. 2011) (citing *Nixon v, Warner Communications, Inc.*, 435 U.S. 589, 597–99 (1978)); *see also United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (there is a "strong presumption that all trial proceedings should be subject to scrutiny by the public."). The U.S. Supreme Court has emphasized the societal importance of open trials, writing that they "assure the public that procedural rights are respected, and that justice is afforded equally" and cautioning that closed trials "breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law." *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 595 (1980).

In order to overcome the strong presumption of access, courts have held that a party seeking to seal judicial records must provide "sufficiently compelling reasons that override the public policies favoring disclosure. . . . That is, the party must articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process. *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013) (applying 9th Cir. law). When ruling on a motion to seal court records, the Federal Circuit has held that a court must "conscientiously balance the competing interests of the public and the party who seeks to keep certain judicial records secret." *Id.* Similarly, the Fifth Circuit has made clear that a district court's discretion to seal the record of judicial proceedings is to be exercised sparingly. *Federal Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987)

Sealing of Courtrooms / Redaction of Trial Transcripts

As a result of privacy concerns due to the public availability of court documents online, Fed. R. Civ. P. 5.2 was adopted in 2007 in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347. The rule provided that four "personal identifiers" (parts of social security numbers, years of birth, initials of a minor and certain digits of bank accounts) be redacted from public filings. In response, the Eastern District of Texas adopted Local Rule CV-5.2 which set forth a procedure for redaction of personal identifiers from court transcripts through a process which took place after the hearing or trial. The rule was limited to personal identifiers, but stated that parties could also request the redaction of additional information by motion. This "additional information" most often takes the form of confidential technical or financial information in complex civil cases. The rule did not set forth requirements for the timing for such additional motions, or establish standards for such redactions, or for the corresponding requests to seal the courtroom when information that would be the subject of such requests is used.

Since the adoption of CV-5.2, parties have pursued different approaches to protecting confidential information at hearings or trials. The parties to the case or an interested third party may request that the courtroom be sealed during the presentation of such testimony. Or they may seek alternative trial presentation procedures to protect the confidentiality of the information without requiring sealing, i.e. requiring witnesses not to read the information aloud, or place it on the courtroom display screens, or redacting names or financial numbers from the portions displayed at trial while leaving them in unredacted form in the admitted exhibits.

In addition, parties have requested either at the time or - assuming that the same timing as requests under CV-5.2 would apply - several days or weeks after the hearing or trial - that the relevant portions of the trial transcript be "sealed." The term "sealing" is actually a misnomer, since what is actually done is redaction of the publicly available version of the transcript, with the original "locked" version of the transcript still available to the district and appellate courts. The practice of processing substantial requests for redactions after a hearing or trial imposes on court staff significant burdens, and in many cases the requested redactions are of information which may have been publicly disclosed without any request for special treatment during trial, or which could have been protected at trial without sealing by an alternative method of presentation.

This Order

This standing order is based upon and codifies the existing case law which balances the interests of parties seeking to protect confidential information against the strong presumption in favor of a common law right of public access to court proceedings noted above. It does so by providing guidance as to when such requests should be made, and what standards apply to such requests.

When Should the Request Be Made?

The above standing order makes clear that requests to seal or otherwise protect information from public disclosure during a hearing or trial should be made before the public disclosure of the information. This avoids the current problem of parties mistakenly assuming that redaction and sealing requests can be made after the fact, as is the case for requests to redact information referenced in Fed. R. Civ. P. 5.2(a), and gives parties the maximum opportunity to work out sealing and redaction issues by agreement.

Requests to seal or protect information after its public disclosure at a hearing or trial are not prohibited, but must, in addition to the normal requirements, show good cause why the motion was not made in advance of the disclosure. Failing a clear showing of good cause such requests should be denied.

What Are the Standards for Sealing/Redaction?

The standards for sealing and redaction are well-established, as noted above, and the above standing order makes no substantive change to them, but instead simply brings them to the parties' attention by requiring that any such request must demonstrate:

a) that the information sought to be protected is of such a sensitive nature that its disclosure creates a risk of harm that outweighs the strong presumption in favor of public access to judicial proceedings; and
b) that the parties have met and conferred in advance and in good faith concerning the manner in which the sensitive information will be presented at the hearing or at trial, with the goal of minimizing the need to seal the record and the courtroom.

The latter requirement gives the parties and the Court the ability to utilize alternative methods of presentation to avoid unnecessary sealing of the courtroom, and redactions to the transcript, as well as opportunities to minimize the inherent courtroom disruptions that the sealing process includes.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING RESEARCH AS TO POTENTIAL JURORS
IN ALL CASES ASSIGNED TO U.S. DISTRICT JUDGE RODNEY GILSTRAP

In preparation for voir dire, the Court will direct the Clerk's office to provide a list of potential jurors to counsel that will form the venire in each case. Guided by the rules of this Court, guidance from the American Bar Association Standing Committee on Ethics and Professional Responsibility, and applicable rules governing counsel's ethical obligations, it is **ORDERED** that the following shall apply regarding the parties' investigation of potential jurors in any case assigned to U.S. District Judge Rodney Gilstrap:

1. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from communicating with or causing another to communicate with in any way, directly or indirectly (including through any non-lawyers or lawyers, connected to the case or not), any juror or potential juror or family members of such individuals, except in the course of official proceedings in this case. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.06(b), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art. 10, § 9).
2. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from conducting or causing another to conduct a "vexatious or harassing" investigation of any juror or potential juror. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.06(a)(1).
3. All attorneys, parties, and their respective employees and agents, including jury consultants, are prohibited from personally or through another sending an access request to the electronic social media ("ESM") platform of any juror or potential juror, including for example a

Facebook friend request or an Instagram request to "Follow" that juror. Other forms of ESM include, but are not limited to LinkedIn and Twitter. *See* ABA Standing Comm. on Ethics and Prof'l Responsibility, Formal Op. 466 (2014). However, for purposes of clarity, the Court informs all attorneys, parties, and their respective employees and agents, including jury consultants, that they are *not* prohibited from conducting or causing another to conduct any type of online investigation merely because a juror or potential juror may become aware that his or her ESM is being reviewed. For example, lawyers are not prohibited from reviewing the LinkedIn accounts of jurors or potential jurors even if network settings would alert that juror or potential juror to the fact that a lawyer from the case has reviewed his or her LinkedIn account. As the ABA Standing Comm. on Ethics and Prof'l Responsibility, Formal Op. 466 (2014) has made clear in this situation:

> This Committee concludes that a lawyer who uses a shared ESM platform to passively view juror ESM under these circumstances does not communicate with the juror. The lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the ESM. This is akin to a neighbor's recognizing a lawyer's car driving down the juror's street and telling the juror that the lawyer had been seen driving down the street.
>
> Formal Op. 466 at Page 5.

4. The Court recognizes the critical role that informed jury selection plays in any jury trial. The Court recognizes the duty imposed on diligent parties to secure as much useful information as possible about venire members, acting within the ethical and legal parameters of our profession. In today's evolving digital world additional guidance from the Court is given to better inform counsel as to such parameters in an effort to more accurately delineate the line between prospective jurors' private and public information. Accordingly, it is **ORDERED** that counsel in every case shall ensure that the following are made aware of this Order and its prohibitions not later than 30 days prior to jury selection:

A. Other attorneys in their respective firms or who may be assisting them or consulting with them on a case;

B. Their employees and agents, including jury consultants;

C. Their clients in the case, and for corporate or other business institutions, the general counsel and the corporate representatives or entity representatives involved in the case.

A violation of this Order may result in sanctions by the Court and/or such other action as the Court deems just and proper.

So ORDERED and SIGNED this 25th day of January, 2017.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

REGARDING CASES ASSIGNED TO
CHIEF UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP

STANDING ORDER REGARDING PARTICIPATION OF LOCAL COUNSEL IN MEDIATION EFFORTS

WHEREAS, Alternative Dispute Resolution in general and mediation in particular are recognized by the Court as beneficial and efficient in civil litigation of all types; and

WHEREAS, it is this Court's longstanding policy and practice to require active mediation in all civil cases at such times as scheduled by the court and prior to trial; and

WHEREAS, mediation is materially more likely to be successful if (in cases in which local counsel have appeared) such efforts actively and substantially involve local counsel; and

WHEREAS, the Court views the active and material participation of local counsel in all phases of trial practice in civil cases as beneficial and efficient, and commends such to all parties appearing before it,

NOW, THEREFORE, IT IS ORDERED THAT:

In all civil cases in which local counsel appear of record prior to mediation being undertaken, local counsel shall be physically present at and materially involved in the mediation process at all times and stages. Any court appointed mediator who learns that local counsel have not so been used, shall report the same to the Court, and such conduct shall be presumed by this Court to evidence a failure to mediate in good faith as required by this District's Court Annexed Mediation Plan (see: http://www.txed.uscourts.gov/?q=court-annexed-mediation-plan) and may subject any offending party and counsel to sanctions as the Court deems just and proper.

The terms of this Standing Order shall immediately apply to all active civil cases currently pending before the undersigned or that may be assigned to the undersigned hereafter.

So ORDERED and SIGNED this 30th day of April, 2018.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

STANDING ORDER REGARDING SUBJECT MATTER ELIGIBILITY CONTENTIONS APPLICABLE TO ALL PATENT INFRINGEMENT CASES ASSIGNED TO CHIEF DISTRICT JUDGE RODNEY GILSTRAP

(a) No later than 45 days after receiving service of the "Disclosure of Asserted Claims and Infringement Contentions," each party alleging that any asserted claim does not qualify as patent-eligible subject matter ("Challenged Claim") shall serve on all parties its "Eligibility Contentions," which must contain the following information:

(1) A chart identifying each exception to eligibility (e.g., abstract idea, law of nature, and natural phenomenon) to which each Challenged Claim is directed and the factual and legal basis therefor. The chart shall also identify whether one or more of the Challenged Claims are representative of any other Challenged Claims.

(2) A chart identifying the following:

(A) A description of the industry, at the relevant time, in which the Challenged Claims are alleged to be well understood, routine, and conventional, and the factual and legal basis therefor;

(B) A description of how each element of each Challenged Claim, both individually and in combination with the other elements of that claim, was:

(i) well understood;

(ii) routine; and

(iii) conventional,

in the relevant industry at the relevant time, and the legal and factual basis therefor.

(3) A chart identifying any other factual or legal basis for how the Challenged Claims are otherwise ineligible for patent protection.

(b) With the "Eligibility Contentions," the party alleging that any Challenged Claim does not qualify as patent-eligible subject matter must produce or make available for inspection and copying all materials upon which that party seeks to rely. Each patent shall be identified by its number, country of origin, and date of issue. Each publication must be identified by its title and where feasible, date of publication, author, and publisher. Evidence of public usage or sales shall be identified by specifying the item offered for sale or publicly used, or information 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 and to whom it was made known. All other materials that are alleged to show that the invention set forth in the Challenged Claims was otherwise available to the public, shall be identified by specifying the form and nature of the materials, the manner in which the materials were made public, and the date on which the materials were made public. To the extent any of the aforementioned materials are not in English, an English translation of the portion(s) relied upon must be produced.

(c) Each party's "Eligibility Contentions," shall be deemed to be that party's final contentions, except as set forth below. Not later than 50 days after service by the Court of its Claim Construction Ruling, each party may serve "Amended Eligibility Contentions" without leave of court, if:

(1) a party claiming patent infringement has served "Amended Infringement Contentions" pursuant to P.R. 3-6(a), or

(2) the party challenging subject-matter eligibility believes in good faith that the Court's Claim Construction Ruling so requires.

(d) Amendment or supplementation of any "Eligibility Contentions," other than as expressly permitted in section (c) of this Order, shall be made only upon leave of the Court, which shall not be granted except upon a showing of good cause.

(e) Unless otherwise expressly ordered in cases now pending, this Standing Order shall apply to all patent infringement cases filed before the Court on or after this date.

So ORDERED and SIGNED this 25th day of July, 2019.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

REGARDING CASES ASSIGNED TO
U.S. DISTRICT JUDGE RODNEY GILSTRAP AND
U.S. DISTRICT JUDGE ROBERT W. SCHROEDER III

STANDING ORDER REGARDING "MEET AND CONFER" OBLIGATIONS RELATING TO DISCOVERY DISPUTES[1]

WHEREAS, consistency and uniformity in both the form and substance of the methods and procedures used by counsel to meet and confer during discovery disputes is a meritorious goal;

WHEREAS, reasonable planning and steps by counsel to efficiently and effectively meet and confer as to discovery disputes in advance of the time for seeking direct intervention by the Court to maximize the best use of the Court's limited resources is an additional meritorious goal; and

WHEREAS, such conduct, and this order for the implementation of the same, fall squarely within the Court's inherent power to manage its docket and oversee the fair presentation of evidence at all stages of the litigation process;

NOW, THEREFORE, IT IS ORDERED THAT:

1. An opposed discovery related motion, or any response thereto, shall not exceed 7 pages. Attachments to a discovery related motion, or a response thereto, shall not exceed 5 pages. No further briefing is allowed absent a request or order from the Court.
2. Prior to filing any discovery related motion, the parties must fully comply with the substantive and procedural conference requirements of Local Rule CV-7(h) and (i). Within 72 hours of the Court setting any discovery motion for a hearing, each party's lead attorney (see Local Rule CV-11(a)) and local counsel shall meet and confer in

person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention.

3. Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than 2 pages. Such joint report shall be filed by the earlier of 48 hours following that meeting or 24 hours before said hearing. Unless excused by the Court, each party's lead attorney shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).

4. Any change to a party's lead attorney designation must be accomplished by motion and order.

The terms of this Standing Order shall immediately apply to and amend all active civil cases currently pending before the undersigned or that may otherwise be assigned to the undersigned hereafter.

So ORDERED and SIGNED this 11th day of March, 2020.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

Robert W. Schroeder III

[1] **Commentary**

Background

In-person lead and local counsel conference requirements for discovery disputes have been employed periodically in the Eastern District by judges in the Marshall, Texarkana, and Tyler divisions for over a decade. The in-person requirements were premised on the goal of resolving avoidable discovery disputes by insuring that the most experienced and objective members of the litigation teams personally discussed potential solutions, and the relative significance of any discovery related dispute, before taxing the resources of the court with motion practice. The in-person requirements have been imposed in addition to the conference requirements contained in the local rules.

Experience with the in-person conference requirement has shown that while it sometimes works as intended, it has equally produced unintended consequences. First, in cases involving geographically diverse counsel, the in-person requirements inject significant costs and delay bringing necessary discovery disputes to the court. These costs and delays include attorney time and travel expenses often borne by the client and significant time delays occasioned by the need to coordinate the schedules of multiple attorneys to be present at a designated conference location. Second, because of the costs and time involved to hold an in-person conference, some parties improperly use the conference

requirement as a shield to avoid confronting legitimate discovery deficiencies raised by an opponent. Third, because the in-person requirement mandates the physical presence of lead counsel, some parties improperly manipulate lead attorney designations. These manipulations include failing to formally identify a lead attorney as required by Local Rule CV-11(a), identifying an attorney who in reality is not the party's lead attorney as lead attorney, identifying multiple or "co-lead" attorneys in violation of Local Rule CV-11(a)'s requirement that “a” lead attorney be identified, or changing the lead attorney designation solely for in-person conference scheduling purposes. Fourth, because the in-person requirement also calls for the physical presence of local counsel, some parties discharge or delay retaining local counsel in support of arguments that any in-person conference should occur at a more favorable location. Additionally, local counsel are often forced into costly and unnecessary travel to accommodate distant conference locations. Finally, because of the difficulty scheduling in-person conferences, some parties attempt to inject disputes never previously raised when an in-person conference occurs, or deviate from traditional understandings of what is or is not a discovery dispute to either avoid or trigger the in-person conference requirement.

Alternatives to the In-Person Conference Requirement for Discovery Disputes

Alternatives to the in-person conference requirement exist and have proven effective in practice. These alternatives serve the same goal as the in-person conference requirement - resolving avoidable discovery disputes - and do so without many of the unintended consequences discussed above. These alternatives include: 1) requiring multiple conferences without a requirement that the conferences occur in-person; 2) requiring a summary written submission of discovery disputes to the court before and/or in lieu of full briefing (*see* Judge Illston's Nov. 10, 2015 Standing Order, N.D. Cal.); 3) requiring telephonic discovery dispute hearings based on succinct written reports after the conference process yields an impasse (*see* Judge Pender's Standing Order Section 5.4, International Trade Commission); or 4) requiring a second conference and report from lead counsel within 72 hours of any discovery motion being set for hearing (*see* Judge Love and Mitchell's Patent Discovery Order Forms, E.D. Tex.).

The court believes the above order will avoid the unintended consequences that have developed around the in-person requirement by replacing that requirement with a process that experience suggests may be more effective at resolving avoidable discovery disputes and reducing their burden on the court when necessary. First, the order still requires a personal conference between lead and local counsel before the filing of any discovery related motion, drawing on the enhanced discovery dispute conference requirements currently contained in Local Rules CV-7(h) and (i). If unresolved by the conference process, the order implements summary written submission of the discovery dispute to the court by limiting any motion or response to no more than 7 pages of briefing and 5 pages of attachments (all of which must comply with the spacing and type requirements of the Local Rules). Based on the summary motion and response, the court may resolve the dispute, request additional or more fulsome briefing, set a telephonic hearing, or set an in-person hearing. Should the court choose to set the motion for hearing, within 72 hours each party's lead attorney and local counsel must confer again, without the involvement or participation of other attorneys, in an effort to resolve the dispute without court intervention and then file a joint report. This second conference is limited to only lead and local counsel to encourage a frank exchange by those hopefully best equipped to judge the both the merits and practical necessity of the dispute. This limitation on participants avoids the sort of one-upmanship sometimes exhibited by junior attorneys seeking to impress their superiors at the expense of efficient dispute resolution. This process also ensures that the court may reliably assign ultimate responsibility to the lead attorney for the outcome of the conference efforts.

Finally, the lead attorneys must then attend the hearing, should it occur. The order addresses the manipulations of lead attorney designations by expressly incorporating Local Rule CV-11(a)'s requirement that "a", singular, lead attorney must be designated upon a party's first appearance, and then adding the additional requirement that changes to the lead attorney designation must be accomplished by motion and order. This process should make questionable lead attorney designations apparent to the court, without burdening the ability to make legitimate changes to the designation when necessary.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

REGARDING CIVIL CASES ASSIGNED TO
CHIEF U.S. DISTRICT JUDGE RODNEY GILSTRAP

STANDING ORDER REGARDING USE OF JUROR QUESTIONNAIRES IN ADVANCE OF *VOIR DIRE*

WHEREAS, the use of written questionnaires by venire panel members in advance of *voir dire* is a positive and useful tool in pursuing the goal of securing uniformly fair and impartial jurors to serve in jury trials, and

WHEREAS, the Court has a direct interest in seeing that such questionnaires elicit useful and appropriate information through reasonable ways and means employed by parties in selecting juries, while avoiding irrelevant, offensive or overly invasive inquiries, and

WHEREAS, a uniform approach to generating and implementing juror questionnaires will further such interests in a manner that maximizes judicial resources;

NOW, THEREFORE, IT IS ORDERED THAT:

1) Juror questionnaires shall substantially follow the template set forth in Exhibit A attached hereto.

2) Such template allows for four categories of inquiry: General Questions; Patent Questions; Case Specific Questions; and Last Question and Signature.

3) Each questionnaire shall, unless otherwise approved by the Court, contain all the General Questions shown in the attached template in the form and wording presented therein.

4) Each questionnaire to be used in any civil case that includes allegations of patent infringement shall, unless otherwise approved by the Court, contain all the Patent Questions shown in the attached template in the form and wording presented therein. The Patent Questions shall follow the General Questions.

5) Each questionnaire may include Case Specific Questions tailored to the particular case at hand. The Case Specific Questions shown in the attached template shall serve as a general guide and example of the type of case specific questions that may be included in any questionnaire.

6) Each questionnaire shall, unless otherwise approved by the Court, contain the Last Question and Signature as shown in the attached template in the form and wording presented therein. Such shall be the last included component of any questionnaire.

7) Parties desiring to avail themselves of the benefits of using a juror questionnaire shall contact the Deputy Clerk in Charge for the Division where the case is pending in advance of the venire panel being summoned and in time to allow the Deputy Clerk in Charge for such Division to print and include such questionnaires in the mailing of summons for jury service. Failure to fully accommodate the deadlines and directives of the Deputy Clerk in Charge shall forfeit any party's opportunity to employ a juror questionnaire.

8) Proposed juror questionnaires shall be delivered to the Deputy Clerk in Charge at the time and date as provided in the then-operative Docket Control Order in each case. Should any Docket Control Order not otherwise specify a date by which a questionnaire is to be submitted, then such questionnaire shall be delivered to the Deputy Clerk in Charge at least four weeks prior to jury selection.

9) The Court shall be free, without consulting with the parties or counsel, to edit, alter, change, or delete any or all of such proposed juror questionnaire when the Court deems all or any portion thereof to be irrelevant, improper, or overly invasive. The Court may order any questionnaire to be rewritten and resubmitted in any way, and the Court may prevent the use of any questionnaire at all when the Court believes the ends of justice so require. The Court may, at its sole discretion, combine questionnaires for any cases set concurrently for a given trial setting in the interest of efficiency.

10) Upon receipt of completed questionnaires from the venire members, the Deputy Clerk in Charge shall make copies of such completed questionnaires available to counsel for the parties not later than 2:00 pm central time on the Thursday prior to jury selection on the following Monday. If any jury is selected on a day other than a Monday, a similar amount of time shall be set by the Deputy Clerk in Charge for the release of such completed

questionnaires to counsel. Completed questionnaires received by the Clerk after such time shall be provided to counsel as the Clerk's schedule permits.

11) All completed questionnaires provided to counsel shall be CONFIDENTIAL AND SUBJECT TO ATTORNEYS' EYES ONLY. Such questionnaires shall be subject to any protective order then in place in such case. No information of any type from any completed questionnaire shall be copied, kept or retained in any manner by counsel, those acting in concert with counsel (including jury consultants), or the parties. All printed copies of such questionnaires made available to counsel shall be returned to the Deputy Clerk in Charge not later than 4:00 pm on the date when the jury is selected.

12) To avoid any doubt and to facilitate full and candid answers to such questionnaires from venire members, no information from any questionnaire shall be retained in any manner by anyone after jury selection is complete or after announcement of a settlement in a case in which juror questionnaires have been furnished to counsel, whichever occurs first.

13) This Order shall be effective immediately and shall supersede any prior orders addressing the above matters.

So ORDERED and SIGNED this 9th day of March, 2021.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

EXHIBIT A

JUROR QUESTIONNAIRE

Instructions

Dear Prospective Juror:

An important part of any trial is the jury selection process. During jury selection, the judge and the lawyers for the parties will ask all of the prospective jurors questions. These questions are necessary to ensure that those selected to serve on the jury are representative of our community at large, and can be fair and impartial judges of the facts. Giving complete and candid answers on this questionnaire and during jury selection is an important step for ensuring a fair and impartial trial, and is one of your important duties as a prospective juror.

What follows is a brief questionnaire. Please answer each question as completely and accurately as you reasonably can. Your answers will help reduce the amount of time needed to complete the jury selection process. If there is not sufficient space provided for you to complete your answer, please use the blank space on this page to complete your answer. The information provided by you will be treated as confidential and used only for purposes of jury selection in this case.

Do not discuss either the questions or your answers with anyone, not even your family or friends. If you do not understand a particular question, please write "I DO NOT UNDERSTAND" next to the question and it will be explained to you in Court.

Keep in mind there are no "right" or "wrong" answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers because they make additional questioning unnecessary. Therefore, they shorten the time it takes to select a jury once you arrive at the Courthouse.

We thank you for your cooperation and your service as a prospective juror.

JUROR QUESTIONNAIRE

OFFICIAL USE ONLY:
DO NOT MODIFY THIS BOX

GENERAL QUESTIONS

1. **JUROR NAME:**_____**AGE:** _____

2. Where do you now work and what is your job? If unemployed/retired, answer for last job held:
   _____
3. What previous jobs have you held? _____
4. What is the last or highest level of school you completed? If college, please list field of study and any degree(s) received: _____
5. In what area(s) have you received special education or training? _____
6. What is your marital status? □ Never married □ Cohabitating □ Married □ Divorced □ Widowed/widower If married/cohabitating, what is your spouse/partner's occupation? _____
7. Have you ever served in the military? □ YES □ NO If **YES**, list which branch, when you served and last rank attained: _____
8. Regarding lawsuits (other than a divorce), have you been a [Check all that apply]:
   □ Plaintiff □ Defendant □ Witness □ Unsure □ Never been involved in a lawsuit
   Please explain**:** _____
9. Do you have strong opinions about lawsuits and the people who bring them? □ YES □ NO □ Unsure
   IF **YES**, please describe:_____
10. Have you ever served on a jury? □ YES □ NO
    If **YES**:
    a. What kind(s) of case(s)? _____
    b. What was the jury's verdict? _____ c. Were you the foreperson? □ YES □ NO
11. Have you ever worked for the government (local, state, or federal)? □ YES □ NO
    IF **YES**, please describe: _____
12. Please list your social, political, civic or religious organizations, clubs, groups, or other affiliations:
    _____
13. Have you held any positions of leadership in these organizations? What role? _____
14. Have you, or an immediate family member, ever worked for a law firm? □ YES □ NO
    IF **YES**, please describe: _____
15. Have you or an immediate family member ever owned a small business? □ YES □ NO
    IF **YES**, please describe: _____
16. Have you or an immediate family member ever been an officer, director, or member of a corporation, partnership, or limited liability company? □ YES □ NO
    IF **YES**, please describe: _____
17. Where do you get most of your news? (circle all that apply)
    Newspaper (which ones?):_____ TV: CNN, NBC, ABC, CBS, FOX, PBS, OAN, Newsmax, Other
    YouTube (which channels)?: _____ Facebook, Twitter, Instagram
    Radio or Podcasts (what programs)?: _____ Friends/Family/Word of mouth
    Magazines: TIME, Newsweek, U.S. News Other Sources: _____
18. Do you believe that individuals or small businesses have little chance of protecting their interests when they conflict with powerful groups or large corporations? □ Strongly Agree □ Somewhat Agree □ Neutral □ Somewhat Disagree □ Strongly Disagree □ No Opinion

PATENT QUESTIONS

19. Have you or anyone you know ever invented, patented or designed anything? □ YES □ NO
    If **YES**:
    a. Who invented, patented, or designed it? _____
    b. What was patented, invented, or designed? _____
20. Have you, or someone close to you, ever had any dealings with the United States Patent and Trademark Office (USPTO)? □ YES □ NO
21. Have you ever applied for a patent? □ YES □ NO
22. Has anyone you know ever applied for a patent? □ YES □ NO □ Unsure
23. Have you or anyone close to you ever worked at a job where you or they were involved in the development or marketing of new products? □ YES □ NO □ Unsure

CASE SPECIFIC QUESTIONS [EXEMPLARY]

1. Have you, or an immediate family member, ever worked in the healthcare industry?
   □ YES □ NO IF **YES**, please explain: _____
   _____
2. Have you received treatment with any product sold by Viveve, ThermiGen, or ThermiAesthetics?
   □ YES □ NO IF **YES**, please explain: _____
3. Have you heard of any of the following systems or treatments? (check if YES)
   □ ThermiVa® □ ThermiRF® □ Viveve® System □ Geneveve® Treatment
4. Are you familiar with Viveve, ThermiGen, or ThermiAesthetics?
   □ YES □ NO IF **YES**, please explain: _____
   _____
5. Have you, or anyone close to you, ever worked for or had any business dealings with any of the following companies: (circle if applicable)
   a.KIPB LLC (formerly known as KAIST IP US LLC) □ YES □ NO
   b.Samsung Electronics □ YES □ NO
   c.GlobalFoundries □ YES □ NO
   d.Qualcomm Inc. □ YES □ NO
   If you answered **YES** to any of the above, please explain:
   _____
6. In general, what is your opinion of Samsung's brand and products?
   □ Very positive □ Somewhat positive □ Neutral □ Somewhat negative □ Very negative □ No Opinion
7. Do you own any Samsung products? □ YES □ NO If **YES**, please explain: _____
8. Do you have any opinions regarding any other company listed on this form? □ YES □ NO
   If **YES**, please explain: _____

FINAL QUESTION AND SIGNATURE

9. Is there anything else you feel the Court and the parties should know about you and your ability to be a fair and impartial juror? □ YES □ NO

   If **YES**, please explain:_____

Prospective Juror Signature _____Date: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ORDER VACATING STANDING ORDERS

In response to the public health emergency caused by COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2, this Court previously entered the following: (1) Standing Order dated March 3, 2020 Regarding The Novel Coronavirus (COVID-19); and (2) Standing Order dated April 20, 2020 Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic. These Standing Orders impose certain precautions and procedures, designed to mitigate public health risks associated with COVID-19, at the Sam B. Hall, Jr. Federal Building and United States Courthouse in Marshall, Texas (the Marshall Division Courthouse).

In recent months, COVID vaccines have been widely distributed across the Eastern District of Texas and the United States, and the COVID-related precautionary guidelines issued by the Centers for Disease Control and Prevention have substantially changed. Given these and related developments in the local, regional, and national response to COVID-19, (1) Standing Order dated March 3, 2020 Regarding The Novel Coronavirus (COVID-19); and (2) Standing Order dated April 20, 2020 Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic are hereby **VACATED**. Notwithstanding the above, all persons entering the Marshall Division

Courthouse will be permitted to wear masks if they so choose, but the procedures and precautions otherwise imposed by (1) Standing Order dated March 3, 2020 Regarding The Novel Coronavirus (COVID-19); and (2) Standing Order dated April 20, 2020, Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic are terminated effective immediately.

The clerk's office is instructed to remove any signage posted under (1) Standing Order dated March 3, 2020 Regarding The Novel Coronavirus (COVID-19); and (2) Standing Order dated April 20, 2020 Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic and to remove any publicly posted copies of these Orders from the Marshall Division Courthouse and the court's website.

So **ORDERED** this 6th day of July, 2021.

Rodney Gilstrap
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
[MARSHALL / TYLER / TEXARKANA] DIVISION

[PLAINTIFF][, et al.,]	§	
	§	
v.	§	Case No. [2 / 6 / 5]:00-CV-000-[JRG / RSP / JDL / KNM / CMC]
	§	
[DEFENDANT][, et al.]	§	

SAMPLE DOCKET CONTROL ORDER FOR PATENT CASES
ASSIGNED TO JUDGE RODNEY GILSTRAP AND JUDGE ROY PAYNE

In accordance with the scheduling conference held in this case, it is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

Date Provided by the Court	*Jury Selection – 9:00 a.m. in [**Marshall / Tyler / Texarkana], Texas**
4 Weeks Before Jury Selection	* If a juror questionnaire is to be used, an editable (in Microsoft Word format) questionnaire shall be jointly submitted to the Deputy Clerk in Charge by this date.[1]
5 Weeks Before Jury Selection	*Pretrial Conference – _____ [a.m. / p.m.] in [**Marshall / Tyler / Texarkana], Texas** before [Judge Rodney Gilstrap / Judge Roy Payne / Judge John Love / Judge Nicole Mitchell/ Judge Caroline Craven]
6 Weeks Before Jury Selection	*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions *in limine*. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
6 Weeks Before Jury Selection	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions *in Limine*, Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations

[1] The Parties are referred to the Court's Standing Order Regarding Use of Juror Questionnaires in Advance of *Voir Dire.*

7 Weeks Before Jury Selection	*File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shawn McRoberts, at shawn_mcroberts@txed.uscourts.gov.
8 Weeks Before Jury Selection	File Motions *in Limine* The parties shall limit their motions *in limine* to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.
8 Weeks Before Jury Selection	Serve Objections to Rebuttal Pretrial Disclosures
9 Weeks Before Jury Selection	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
11 Weeks Before Jury Selection	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
12 Weeks Before Jury Selection	*Response to Dispositive Motions (including *Daubert* Motions). Responses to dispositive motions that were filed prior to the dispositive motion deadline, including *Daubert* Motions, shall be due in accordance with Local Rule CV-7(e), not to exceed the deadline as set forth in this Docket Control Order.[2] Motions for Summary Judgment shall comply with Local Rule CV-56.
14 Weeks Before Jury Selection	*File Motions to Strike Expert Testimony (including *Daubert* Motions) No motion to strike expert testimony (including a *Daubert* motion) may be filed after this date without leave of the Court.

[2] The parties are directed to Local Rule CV-7(d), which provides in part that "[a] party's failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion." If the deadline under Local Rule CV 7(e) exceeds the deadline for Response to Dispositive Motions, the deadline for Response to Dispositive Motions controls.

14 Weeks Before Jury Selection	*File Dispositive Motions No dispositive motion may be filed after this date without leave of the Court. Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.
15 Weeks Before Jury Selection	Deadline to Complete Expert Discovery
17 Weeks Before Jury Selection	Serve Disclosures for Rebuttal Expert Witnesses
20 Weeks Before Jury Selection	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
20 Weeks Before Jury Selection	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
3 Weeks After Claim Construction Hearing	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
Date Provided by the Court	*Claim Construction Hearing – _____ [a.m. / p.m.] in [**Marshall / Tyler / Texarkana], Texas** before [Judge Rodney Gilstrap / Judge Roy Payne / Judge John Love / Judge Nicole Mitchell/ Judge Caroline Craven]
2 Weeks Before Claim Construction Hearing	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
3 Weeks Before Claim Construction Hearing	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
4 Weeks Before Claim Construction Hearing	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
6 Weeks Before Claim Construction Hearing	Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any) Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).

6 Weeks Before Claim Construction Hearing	Deadline to Substantially Complete Document Production and Exchange Privilege Logs Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
8 Weeks Before Claim Construction Hearing	Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
9 Weeks Before Claim Construction Hearing	File Response to Amended Pleadings
11 Weeks Before Claim Construction Hearing	*File Amended Pleadings It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.
12 Weeks Before Claim Construction Hearing	Comply with P.R. 4-3 (Joint Claim Construction Statement)
15 Weeks Before Claim Construction Hearing	Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)
18 Weeks Before Claim Construction Hearing	Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
6 Weeks After Scheduling Conference	Comply with Standing Order Regarding Subject-Matter Eligibility Contentions[3]
6 Weeks After Scheduling Conference	Comply with P.R. 3-3 & 3-4 (Invalidity Contentions)
3 Weeks After Scheduling Conference	*File Proposed Protective Order and Comply with Paragraphs 1 & 3 of the Discovery Order (Initial and Additional Disclosures) The Proposed Protective Order shall be filed as a separate motion with the caption indicating whether or not the proposed order is opposed in any part.

[3] http://www.txed.uscourts.gov/sites/default/files/judgeFiles/EDTX%20Standing%20Order%20Re%20Subject%20Matter%20Eligibility%20Contentions%20.pdf [https://perma.cc/RQN2-YU5P]

2 Weeks After Scheduling Conference	*File Proposed Docket Control Order and Proposed Discovery Order The Proposed Docket Control Order and Proposed Discovery Order shall be filed as separate motions with the caption indicating whether or not the proposed order is opposed in any part.
1 Week After Scheduling Conference	Join Additional Parties
2 Weeks Before Scheduling Conference	Comply with P.R. 3-1 & 3-2 (Infringement Contentions)

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

ADDITIONAL REQUIREMENTS

Mediation: While certain cases may benefit from mediation, such may not be appropriate for every case. The Court finds that the Parties are best suited to evaluate whether mediation will benefit the case after the issuance of the Court's claim construction order. Accordingly, the Court **ORDERS** the Parties to file a Joint Notice indicating whether the case should be referred for mediation **within fourteen days of the issuance of the Court's claim construction order**. As a part of such Joint Notice, the Parties should indicate whether they have a mutually agreeable mediator for the Court to consider. If the Parties disagree about whether mediation is appropriate, the Parties should set forth a brief statement of their competing positions in the Joint Notice.

Summary Judgment Motions, Motions to Strike Expert Testimony, and *Daubert* Motions: For each motion, the moving party shall provide the Court with two (2) hard copies of the completed briefing (opening motion, response, reply, and if applicable, sur-reply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. These copies shall be delivered to the Court within three (3) business days after briefing has completed. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive to the Court. Complete digital copies of the expert report(s) shall be delivered to the Court no later than the dispositive motion deadline.

Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

Lead Counsel: The Parties are directed to Local Rule CV-11(a)(1), which provides that "[o]n the first appearance through counsel, each party shall designate a lead attorney on the pleadings or otherwise." Additionally, once designated, a party's lead attorney may only be changed by the filing of a Motion to Change Lead Counsel and thereafter obtaining from the Court an Order granting leave to designate different lead counsel.

Motions for Continuance: The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

(a) The fact that there are motions for summary judgment or motions to dismiss pending;

(b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;

(c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Amendments to the Docket Control Order ("DCO"): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

Proposed DCO: The Parties' Proposed DCO should also follow the format described above under "Amendments to the Docket Control Order ('DCO')."

Joint Pretrial Order: In the contentions of the Parties included in the Joint Pretrial Order, the Plaintiff shall specify all allegedly infringed claims that will be asserted at trial. The Plaintiff shall also specify the nature of each theory of infringement, including under which subsections of 35 U.S.C. § 271 it alleges infringement, and whether the Plaintiff alleges divided infringement or infringement under the doctrine of equivalents. Each Defendant shall indicate the nature of each theory of invalidity, including invalidity for anticipation, obviousness, subject-matter eligibility, written description, enablement, or any other basis for invalidity. The Defendant shall also specify each prior art reference or combination of references upon which the Defendant shall rely at trial, with respect to each theory of invalidity. The contentions of the Parties may not be amended, supplemented, or dropped without leave of the Court based upon a showing of good cause.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

[PLAINTIFF]	§	
	§	
v.	§	Case No. 2:00-CV-000-JRG-RSP
	§	
[DEFENDANT][, et al.]	§	

SAMPLE DISCOVERY ORDER FOR PATENT CASES
ASSIGNED TO JUDGE RODNEY GILSTRAP AND JUDGE ROY PAYNE

[*Instructions: The parties are expected to meet and confer prior to submitting a proposed Discovery Order based upon this model order. Only the underlined portions (in paragraphs 5 and 12) may be modified by the parties according to the needs of the case.*]

After a review of the pleaded claims and defenses in this action, in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to this action, it is ORDERED AS FOLLOWS:

1. Initial Disclosures. In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party the following information:

(a) the correct names of the parties to the lawsuit;

(b) the name, address, and telephone number of any potential parties;

(c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);

(d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;

(e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;

(f) any settlement agreements relevant to the subject matter of this action; and

(g) any statement of any party to the litigation.

2. Disclosure of Expert Testimony. A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:

(a) if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and

(b) for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).

3. Additional Disclosures. Without awaiting a discovery request,[1] each party will make the following disclosures to every other party:

(a) provide the disclosures required by the Patent Rules for the Eastern District of Texas with the following modifications to P.R. 3-1 and P.R. 3-3:

i. If a party claiming patent infringement asserts that a claim element is a software limitation, the party need not comply with P.R. 3-1 for those claim

[1] The Court anticipates that this disclosure requirement will obviate the need for requests for production.

elements until 30 days after source code for each Accused Instrumentality is produced by the opposing party. Thereafter, the party claiming patent infringement shall identify, on an element-by-element basis for each asserted claim, what source code of each Accused Instrumentality allegedly satisfies the software limitations of the asserted claim elements.

ii. If a party claiming patent infringement exercises the provisions of Paragraph 3(a)(i) of this Discovery Order, the party opposing a claim of patent infringement may serve, not later than 30 days after receipt of a Paragraph 3(a)(i) disclosure, supplemental "Invalidity Contentions" that amend only those claim elements identified as software limitations by the party claiming patent infringement.

(b) produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except to the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas; and

(c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

4. Protective Orders. The Court will enter the parties' Agreed Protective Order.

5. **Discovery Limitations.** The discovery in this cause is limited to the disclosures described in Paragraphs 1-3 together with: [40 interrogatories per side, 40 requests for admissions per side, the depositions of the parties, depositions on written questions of custodians of business records for third parties, 60 hours of nonparty depositions per side, and 3 expert witnesses per side. "Side" means a party or a group of parties with a common interest.] Any party may later move to modify these limitations for good cause.

6. **Privileged Information.** There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Status Conference. By the deadline set in the Docket Control Order, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the Court for an order compelling the production of any documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall then file with the Court within 30 days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection.

7. **Signature.** The disclosures required by this Order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by this Order;

otherwise, such disclosures shall be served as provided by Federal Rule of Civil Procedure 5. The parties shall promptly file a notice with the Court that the disclosures required under this Order have taken place.

8. Duty to Supplement. After disclosure is made pursuant to this Order, each party is under a duty to supplement or correct its disclosures **immediately** if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.

9. Discovery Disputes.

(a) Except in cases involving claims of privilege, any party entitled to receive disclosures ("Requesting Party") may, after the deadline for making disclosures, serve upon a party required to make disclosures ("Responding Party") a written statement, in letter form or otherwise, of any reason why the Requesting Party believes that the Responding Party's disclosures are insufficient. The written statement shall list, by category, the items the Requesting Party contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the Responding Party shall, within 14 days after service of the written statement upon it, serve upon the Requesting Party a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The Requesting Party may thereafter file a motion to compel.

(b) An opposed discovery related motion, or any response thereto, shall not exceed 7 pages. Attachments to a discovery related motion, or a response thereto, shall not

exceed 5 pages. No further briefing is allowed absent a request or order from the Court.

(c) Prior to filing any discovery related motion, the parties must fully comply with the substantive and procedural conference requirements of Local Rule CV-7(h) and (i). Within 72 hours of the Court setting any discovery motion for a hearing, each party's lead attorney (*see* Local Rule CV-11(a)) and local counsel shall meet and confer in person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention.

(d) Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than two pages. Unless excused by the Court, each party's lead attorney shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).

(e) Any change to a party's lead attorney designation must be accomplished by motion and order.

(f) Counsel are directed to contact the chambers of the undersigned for any "hot-line" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(e). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(e).

10. No Excuses. A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure because there are pending motions to dismiss, to remand or to change venue.

11. **Filings.** Only upon request from chambers shall counsel submit to the court courtesy copies of any filings.

12. **Proposed Stipulations by the Parties Regarding Discovery.** [The parties may include proposed stipulations regarding discovery here. Proposed Stipulations may not be used to modify the ordinary procedures of the Court (e.g. the requirement that an in person conference be held prior to filing a discovery-related motion.) If there are no proposed stipulations, indicate "None."]

13. **Standing Orders.** The parties and counsel are charged with notice of and are required to fully comply with each of the Standing Orders of this Court. Such are posted on the Court's website at http://www.txed.uscourts.gov/?q=court-annexed-mediation-plan. The substance of some such orders may be included expressly within this Discovery Order, while others (including the Court's Standing Order Regarding Protection of Proprietary and/or Confidential Information to Be Presented to the Court During Motion and Trial Practice) are incorporated herein by reference. All such standing orders shall be binding on the parties and counsel, regardless of whether they are expressly included herein or made a part hereof by reference.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
[MARSHALL / TYLER / TEXARKANA] DIVISION

[PLAINTIFF][, et al.,]	§	
	§	
v.	§	Case No. [2 / 6 / 5]:00-CV-000-[JRG / RSP / JDL / KNM / CMC]
	§	
[DEFENDANT][, et al.]	§	

SAMPLE PROTECTIVE ORDER FOR PATENT CASES

WHEREAS, Plaintiff _____ and Defendant _____ , hereafter referred to as "the Parties," believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material ("Protected Material"). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: "CONFIDENTIAL." The word "CONFIDENTIAL" shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word "CONFIDENTIAL" shall be placed on the cover page of the transcript (if not already

present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as "CONFIDENTIAL."

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order with the designation "Confidential" or "Confidential - Outside Attorneys' Eyes Only" shall receive the same treatment as if designated "RESTRICTED - ATTORNEYS' EYES ONLY" under this Order, unless and until such document is redesignated to have a different classification under this Order.

3. With respect to documents, information or material designated "CONFIDENTIAL, "RESTRICTED - ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" ("DESIGNATED MATERIAL"),[1] subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., "CONFIDENTIAL," "RESTRICTED -

[1] The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as "CONFIDENTIAL," "RESTRICTED - ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE," both individually and collectively.

ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE") may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

5. "CONFIDENTIAL" documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action for the Parties;

(b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;

(e) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or

an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or Undertaking to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;

(f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(g) the Court and its personnel.

6. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

7. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any

such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED -- ATTORNEYS' EYES ONLY," or to the extent such Protected Material includes computer source code and/or live data (that is, data as it exists residing in a database or databases) ("Source Code Material"), the producing Party may designate such Protected Material as "RESTRICTED CONFIDENTIAL SOURCE CODE."

9. For Protected Material designated RESTRICTED -- ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-c) and (e-g); provided, however, that access by in-house counsel pursuant to paragraph 5(c) be limited to in-house counsel who exercise no competitive decision-making authority on behalf of the client.

10. For Protected Material designated RESTRICTED CONFIDENTIAL SOURCE CODE, the following additional restrictions apply:

    (a) Access to a Party's Source Code Material shall be provided only on "stand-alone" computer(s) (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computer(s) may be connected to (i) a printer, or (ii) a device capable of temporarily storing electronic copies solely for the limited purposes permitted pursuant to paragraphs 10 (h and k) below. Additionally, except as provided in paragraph 10(k) below, the stand-alone computer(s) may only be located at the offices of the producing Party's outside counsel;

    (b) The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer(s) to normal business hours, which for purposes of this paragraph shall be 8:00 a.m. through 6:00 p.m. However, upon reasonable notice from the receiving party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer(s)

outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action;

(c) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computer(s);

(d) The producing Party will produce Source Code Material in computer searchable format on the stand-alone computer(s) as described above;

(e) Access to Protected Material designated RESTRICTED CONFIDENTIAL - SOURCE CODE shall be limited to outside counsel and up to three (3) outside consultants or experts[2] (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 5(e) above. A receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders;

(f) To the extent portions of Source Code Material are quoted in a Source Code Document, either (1) the entire Source Code Document will be stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE or (2) those pages containing quoted Source Code Material will be separately stamped and treated as RESTRICTED CONFIDENTIAL SOURCE CODE;

(g) Except as set forth in paragraph 10(k) below, no electronic copies of Source Code Material shall be made without prior written consent of the producing Party, except as necessary to create documents which, pursuant to the Court's rules, procedures and order, must be filed or served electronically;

(h) The receiving Party shall be permitted to make a reasonable number of printouts and photocopies of Source Code Material, all of which shall be designated and clearly labeled "RESTRICTED CONFIDENTIAL SOURCE CODE," and the receiving Party shall maintain a log of all such files that are printed or photocopied;

[2] For the purposes of this paragraph, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert.

(i) Should such printouts or photocopies be transferred back to electronic media, such media shall be labeled "RESTRICTED CONFIDENTIAL SOURCE CODE" and shall continue to be treated as such;

(j) If the receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition); and

(k) A producing Party's Source Code Material may only be transported by the receiving Party at the direction of a person authorized under paragraph 10(e) above to another person authorized under paragraph 10(e) above, on paper or removable electronic media (*e.g.*, a DVD, CD-ROM, or flash memory "stick") via hand carry, Federal Express or other similarly reliable courier. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet. Source Code Material may only be transported electronically for the purpose of Court proceeding(s) or deposition(s) as set forth in paragraph 10(j) above and is at all times subject to the transport restrictions set forth herein. But, for those purposes only, the Source Code Materials may be loaded onto a stand-alone computer.

11. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party's Protected Material that is designated RESTRICTED -- ATTORNEYS' EYES ONLY and/or RESTRICTED CONFIDENTIAL SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit on behalf of the receiving Party or its acquirer, successor, predecessor, or other affiliate during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose

of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who, on behalf of the Party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent-in-suit.

12. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather and return all copies of such documents, information or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.

13. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order.

The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

14. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party, (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information, (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL, (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraph 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court.

15. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL," "RESTRICTED - ATTORNEY' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms

of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as confidential.

16. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

17. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.

18. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules

of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.

19. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

20. To the extent that any discovery is taken of persons who are not Parties to this Action ("Third Parties") and in the event that such Third Parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.

21. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL" or "RESTRICTED -- ATTORNEYS' EYES ONLY" any documents, information or other material, in whole or in part, produced or given by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as "CONFIDENTIAL" in accordance with this Order.

22. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated

into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall at the producing Party's election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party's request.

23. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

24. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

25. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

26. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.

27. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
[MARSHALL / TYLER / TEXARKANA] DIVISION

[PLAINTIFF][, et al.,]	§	
	§	
v.	§	Case No. [2 / 6 / 5]:00-CV-000-[JRG / RSP / JDL / KNM / CMC]
	§	
[DEFENDANT][, et al.]	§	

APPENDIX A
UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING PROTECTIVE ORDER

I, _____, declare that:

1. My address is _____.

   My current employer is _____.

   My current occupation is _____.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as "CONFIDENTIAL," "RESTRICTED -- ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as "CONFIDENTIAL," "RESTRICTED -- ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE" that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel

for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____