

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

**GENERAL ORDER REGARDING TRACK B INITIAL PATENT
CASE MANAGEMENT ORDER**

In service of the objectives of Fed. R. Civ. P. 1, this Court has developed and implemented specialized case management procedures for the efficient handling of patent litigation. In particular, the judges of this district have developed similar, though not identical, case management schemes that have provided predictability and structure to litigation that can otherwise be unwieldy. These now familiar case management schemes, which this Order will collectively refer to as “Track A,” have proven effective in achieving their objective.

However, drawing on the experience gained implementing Track A, the Court expects that additional efficiencies and cost savings can be achieved through the use of alternative procedures in appropriate cases, while still ensuring a full and fair opportunity for the speedy determination of each case on its merits. This alternative, “Track B,” is meant to complement the default procedures of Track A, by providing a choice. Accordingly, the Court hereby **ORDERS** the following:

To secure the just, speedy, and inexpensive determination of every action and proceeding pursuant to Fed. R. Civ. P. 1, the Court authorizes the use of the attached Track B Initial Patent Case Management order in all patent cases.

This Track B Initial Patent Case Management Order will be deemed effective and entered of record upon 1) all parties filing a joint notice electing its entry, or 2) an order of the Court. Notices of election shall be filed on or before the date by which all defendants have filed an answer or motion pursuant to Fed. R. Civ. P. 12(b), and shall be accompanied by an appropriately styled, though otherwise unaltered, version of the attached Order for the Court's signature. Upon a Track B election, the Court will also enter its Standard Protective Order to facilitate the required disclosures. Should additional parties be added or consolidated into a case after the filing of a Track B election, such new parties may file any objection to the election on or before the date by which the party files an answer or Rule 12(b) motion. The Court will then consider and dispose of any objection appropriately. Absent the Court's request, no response to the objection should be filed.

So ORDERED this 25 day of February, 2014.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
Chief Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

PLAINTIFF, §
§
v. § Civil No.: _____
§
DEFENDANT. §

TRACK B INITIAL PATENT CASE MANAGEMENT ORDER

Pursuant to Fed. R. Civ. P. 16(b), the Court ORDERS the following:

1. **Infringement Contentions and Licensing Disclosures.** Within 14 days of all defendants filing an answer or motion pursuant to Fed. R. Civ. P. 12(b), a party claiming patent infringement shall serve its infringement contentions and accompanying production in compliance with P.R. 3-1 and 3-2. A party claiming patent infringement shall also produce all licenses or settlement agreements concerning the patents-in-suit and any related patent.
2. **Initial Disclosures and Summary Sales Information.** Within 30 days of service of infringement contentions, all parties shall serve Initial Disclosures per Fed. R. Civ. P. 26(a)(1). Each party opposing a claim of patent infringement shall also produce summary sales information reflecting the quantity of accused products sold in the United States and the revenues from those sales. For purposes of this disclosure, accused products include all products identified in the infringement contentions and all reasonably similar products (i.e., other products that a party should reasonably expect to be accused of infringement of the asserted claims after a full opportunity for discovery).
3. **Good Faith Damages Estimate.** Within 14 days of the service of Initial Disclosures and summary sales information, each party claiming patent infringement shall file a good faith

estimate of its expected damages, including a summary description of the method used to arrive at that estimate. This good faith estimate is non-binding in that it will not serve to limit the damages a party may recover.

4. **Invalidity Contentions.** Within 14 days of service of the good faith estimate of expected damages, each party opposing a claim of patent infringement shall serve its invalidity contentions and accompanying production in compliance with P.R. 3-3 and 3-4.

5. **Notice of Readiness for Management Conference.** Within 5 days of the service of invalidity contentions, Plaintiff shall file a notice that the case is ready for management conference, which will then be set by the Court. The parties shall proceed with claim construction related disclosures (P.R. 4-1 through 4-3) according to the timing set by the local patent rules. All local patent rule deadlines after the filing of the P.R. 4-3 joint claim construction statement will be set at the management conference.

6. **Conference of the Parties and Discovery Plan.** At least 14 days before the date set by the Court for the management conference, the parties shall confer pursuant to Fed. R. Civ. P. 26(f). At least 7 days before the date set by the Court for the management conference, the parties shall jointly file a discovery plan that addresses each of the following:

- a. the existence of related cases and the appropriateness of consolidation;
- b. appropriate discovery limitations considering the case facts and likely value, including written discovery limits, deposition limits, the number of expert witnesses, and whether expert depositions should be authorized;
- c. whether document production should proceed by request for production or mandatory disclosure;

- d. whether the court should enter the EDTX Model Order Focusing Patent Claims and Prior Art to Reduce Costs or modifications thereto;
- e. whether the court should enter the EDTX Model Order Regarding E-Discovery or modifications thereto;
- f. amendments to the Standard Protective Order or entry of an agreed protective order;
- g. the scheduling of the case for claim construction, including an appropriate limit on the number of claim terms for construction, and trial scheduling;
- h. the appointment of a mediator and an appropriate mediation schedule;
- i. clearly dispositive issues that warrant special scheduling;
- j. the appropriateness of an expedited trial, consolidated claim construction and trial procedure, trial on limited issues, or a stipulation for post-trial mediation before the entry of judgment on the verdict;
- k. any existing or likely discovery disputes; and
- l. whether the parties consent to trial before a magistrate judge.

For any areas of dispute, the report should clearly define the parties' respective positions so that all issues can be decided at the management conference.

7. **Initial Discovery Limitations.** Prior to the management conference, discovery is limited to 5 interrogatories, 5 requests for production, and 5 requests for admission per side, absent leave of court or stipulation of the parties.

8. **Management Conference Requirements.** At the management conference, the parties shall be prepared to discuss each of the items addressed in paragraph 6 and any other issues that may be set by the Court. In particular, the Court is interested in setting a schedule and discovery

limitations that are fair and adequate, but that also bear an appropriate relationship to the likely value of the case.

9. **Sanctions.** Failure to comply with this order invites sanctions. Additionally, while the Court is cognizant that this order requires certain disclosures that depend on the exercise of judgment at an early stage of the case, should case development reveal that a party's disclosures under this order lacked a good faith basis, were unreasonably sparse, or were intentionally misleading, appropriate sanctions will be imposed.