IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

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| [PLAINTIFF[S]]  v.  [DEFENDANT[S]] | §  §  §  §  §  §  § | CASE NO.  JUDGE MICHAEL TRUNCALE |

**PROPOSED ORDER SETTING PATENT CASES FOR**

**RULE 16 MANAGEMENT CONFERENCE**

This Order shall govern proceedings in this case. The following deadlines are hereby set:

1. Rule 26(f) Attorney Conference on or before **[insert date: 18 days after date of this Order.]**
2. File joint report of attorney conference: **within** **14 days after deadline for Rule 26(f) Attorney Conference.**
3. Plaintiff shall complete its Disclosure of Asserted Claims and Infringement Contentions (P.R. 3-1), together with the document production accompanying the disclosure (P.R. 3-2), **10 days before the Rule 16 Case Management Conference.**
4. The case is **SET for a Rule 16 Case Management Conference on [insert date: 50 days after date of this Order]**, in Suite 221, Jack Brooks Federal Building, 300 Willow Street, Beaumont, Texas. Lead counsel for each party, with authority to bind their respective clients, shall be present.[[1]](#footnote-1) Continuance of the Management Conference will not be allowed absent a showing of good cause.[[2]](#footnote-2)
5. Parties should start their Initial Mandatory Disclosures 14 days after deadline for Rule 26(f) Attorney Conference and shall complete them by the date set in the Scheduling Order entered after the Rule 16 Case Management Conference.

**RULE 26(f) ATTORNEY CONFERENCE**

**AND JOINT CONFERENCE REPORT**

Rule 26(f) requires attorneys of record and all unrepresented parties to confer and attempt in good faith to agree on a proposed Scheduling Order (*see* Appendix 1) and to electronically file a joint report outlining their proposals. The conference may be by telephone.

Before commencing the Rule 26(f) Attorney Conference, counsel must discuss settlement options with their clients, including whether an offer or demand should be made at the Rule 26(f) Attorney Conference. Counsel should also inquire whether their clients are amenable to trial before a United States Magistrate Judge. Parties willing to consent should file the appropriate form electronically (*see* form on the Eastern District of Texas website) as soon as possible, so that the case can be reset for a management conference before the magistrate judge to whom the case is assigned.

The parties must include the following matters in the Joint Conference Report:

1. Suggested modifications of the proposed deadlines for the scheduling order set out in Appendix 1. Now is the time to inform the Court of any special complexities or need for more time before the trial setting.
2. What changes, if any, should be made to the limitations on discovery imposed by the rules.
3. Proposals regarding the following:
   1. Number of Interrogatories per Side. “Side” means a party or a group of parties with a common interest.
   2. Number of Requests for Admission per Side.
   3. Number of Requests for Production per Side. Take into consideration the extensive disclosures required by the Initial Mandatory Disclosures.
   4. Number of hours for Fact Depositions per Side (for both party and non-party witnesses combined).
   5. Number of hours for Expert Depositions per report.
   6. Any other changes to the limitations on discovery agreed by the parties.
4. If the parties agree that mediation is appropriate, and the parties can agree upon a mediator, the name, address, and phone number of that mediator, and a proposed deadline should be stated. An early date is encouraged to reduce expenses. The court may appoint a mediator upon request.
5. The identity of persons expected to be deposed.
6. Any issues relating to disclosure of information (electronically stored and otherwise) including the form or forms in which it should be produced and timing of production. *See* Initial Mandatory Disclosures.
7. Any issues relating to disclosure of information, including whether a Preservation Order is needed to protect any documents and/or electronically stored information.
8. Whether any other orders should be entered by the Court pursuant to Federal Rule of Civil Procedure 26(c) or 16(b), (c).
9. The expected length of trial and whether it will be to a jury or the bench.
10. The names of the attorneys who will appear on behalf of the parties at the Management Conference (the appearing attorney must be an attorney of record and have full authority to bind the client).
11. Any other matters that counsel deem appropriate for inclusion in the Joint Conference Report, such as agreements reached under Federal Rule of Evidence 502. *See* Fed. R. Civ. P. 16(b)(3).

**INITIAL MANDATORY DISCLOSURES**

Initial Mandatory Disclosures pursuant to Rule 26(a)(1) shall include the following:

1. The correct names of the parties to the action.
2. The name and, if known, the address and telephone number of any potential parties to the action.
3. The name and, if known, the address and telephone number of persons having knowledge of facts relevant to a claim or defense of any party, a brief characterization of their connection to the case and a fair summary of the substance of the information known by such person. This may be combined with the list of persons required under Federal Rule of Civil Procedure 26(a)(1)(A)(i) so that two lists are not needed.
4. Depending upon agreements of the Parties or ruling of the court, a copy of, or a description by category and location where each is available for inspection and copying, all documents, electronically stored information, and tangible things in the possession, custody, or control of the disclosing party that are relevant to a claim or defense of any party. This may be combined with disclosures under Rule 26(a)(1)(A)(ii) so that duplication is avoided. Parties are encouraged to agree upon provision of information by electronic means.

*See* Local Rule CV-26(d) for the meaning of“relevant to a claim or defense of any party.” **A party that fails to timely disclose such information will not, unless such failure is harmless, be permitted to use such evidence at trial, at a hearing, or in support of a motion.**  A party is not excused from making its disclosures because it has not fully completed its investigation of the case.

Absent agreement of the parties, depositions of witnesses shall not be taken until after the Initial Rule 16 Case Management Conference. Following the Case Management Conference, the Court will enter a scheduling order establishing parameters of discovery and setting deadlines controlling dispositions of the case.

Discovery directed solely to damages shall usually be postponed until after the claim construction hearing. On the date set in the Scheduling Order, the parties shall complete discovery and Initial Disclosures on the issue of damages and shall respond to all damage discovery requests to which a response is due as of that date.

A party asserting that any information is confidential should immediately apply to the Court for entry of a Protective Order. Unless a request is made for modification, the Court will use its standard Protective Order, found on the Eastern District of Texas website at Judges / Judge Michael Truncale / Standard Forms.

**PROTECTIVE ORDER**

Pending entry of the final Protective Order, the Court issues the following interim Protective Order to govern the disclosure of confidential information in this matter:

If any document or information produced in this matter 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 shall keep it confidential and use it only for purposes of litigating the case.**APPENDIX 1**

**PROPOSED SCHEDULING ORDER DEADLINES**

The following actions shall be completed by the date indicated.[[3]](#footnote-3) The dates indicated are the standard for most cases. Counsel should be prepared to explain the need for requested changes.

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| **Proposed Deadlines** | **Item** |
| 10 days before Case Management Conference. | Comply with Patent Local Rule (“P.R.”) 3-1 & 3-2 (Infringement Contentions). |
| 1 week after Case Management Conference. | File joint proposed Protective Order.  Deadline to join additional parties. |
| 3 weeks after Case Management Conference. | Complete Initial Mandatory Disclosures other than information directed solely towards damages. |
| 5 weeks after Case Management Conference. | Comply with P.R. 3-3 & 3-4 (Invalidity Contentions). |
| 18 weeks before Claim Construction Hearing. | Comply with P.R. 4-1 (Exchange Proposed Claim Terms). |
| 15 weeks before Claim Construction Hearing. | Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions). |
| 12 weeks before Claim Construction Hearing. | Comply with P.R. 4-3 (Joint Claim Construction Statement). |
| 11 weeks before Claim Construction Hearing. | 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.  **Note:** Responses to Amended Pleadings are due 2 weeks after being served. |
| 8 weeks before Claim Construction Hearing. | Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery). |
| 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).  Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents). |
| 4 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(b) (Responsive Claim Construction Brief). |
| 3 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(c) (Reply Claim Construction Brief). |
| 2 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(d) (Joint Claim Construction Chart). |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  23 weeks after Case Management Conference (or as soon as practicable). | **Claim Construction Hearing** at 9 a.m., Courtroom #2 Jack Brooks Federal Building, 300 Willow Street, Beaumont, Texas before Judge Michael Truncale. |
| 3 weeks after Claim Construction Hearing. | Comply with P.R. 3-7 (Opinion of Counsel Defenses). |
| 30 days after Claim Construction Ruling. | Comply with P.R. 3-6 (Amended Infringement Contentions). |
| 50 days after Claim Construction Ruling. | Comply with P.R. 3-6 (Amended Invalidity Contentions). |
| 8 weeks after Claim Construction Hearing. | Provide Initial Mandatory Disclosures of Information directed solely to damages. |
| 20 weeks before Jury Selection. | Complete all Factual Discovery and Motions to Compel.  Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof.  **Note:** Objections to any expert, including Daubert motions, shall be filed within three weeks after the expert’s report has been disclosed. Such objections and motions are limited to ten pages. |
| 17 weeks before Jury Selection. | Serve Disclosures for Rebuttal Expert Witnesses.  **Note:** Objections to any expert, including Daubert motions, shall be filed within three weeks after the expert’s report has been disclosed. Such objections and motions are limited to ten pages. |
| 15 weeks before Jury Selection. | Complete all Expert Discovery. |
| 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.  **Note:** Responses to motions shall be due in accordance with Local Rule CV-7(e). |
| 9 weeks before Jury Selection. | Notice of intention to offer certified records. |
| 8 weeks before Jury Selection. | Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in non-jury cases). |
| 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, April Hargett, at april\_hargett@txed.uscourts.gov. |
| 6 weeks before Jury Selection. | For witnesses who are not going to be called live, oral and video deposition designations due. Each party who proposes to offer a deposition by video shall serve on all other parties a disclosure identifying the line and page numbers to be offered. All other parties will have seven calendar days to serve a response with any objections and requesting line and page numbers to be offered. Counsel must consult on any objections, and only those which cannot be resolved shall be presented to the court. The party who filed the initial video deposition designation is responsible for preparation of the final edited video in accordance with all parties’ designations, and the Court’s rulings on objections. (Designations are not to be made for witnesses who will appear live, nor for impeachment on cross-examination.)  Deadline to file Joint Final Pretrial Order. (Obtain form for Exhibit List from the Eastern District of Texas website.) |
| 5 weeks before Jury Selection. | File Proposed Jury Instructions/Verdict Form (or Proposed Findings of Fact and Conclusions of Law).  Motions in Limine due.  File all other unresolved objections (after meeting and conferring) not specifically provided herein and that relate to the pre-trial order, including: witnesses, deposition extracts, and exhibits. |
| 4 weeks before Jury Selection. | Response to Motions in Limine due.[[4]](#footnote-4)  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.[[5]](#footnote-5) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  4 weeks before Jury Selection. | Final Pretrial at 9:00 a.m. in Lufkin, Texas. Date parties should be prepared to try case. Provide court with two copies of Exhibit List, using form from District Clerk’s Office. Absent agreement of the parties, this should not have exhibits which were not listed in the Final Pretrial Order. |
| 3 weeks before Jury Selection. | Parties must notify the Court of agreements reached during Meet and Confer. The parties are ordered to meet and confer on any outstanding objections or motions in limine. |
| No later than 1:00 p.m. three (3) business days before the pretrial conference. | The parties shall advise the Court of any subsequent agreements reached on outstanding objections or motions in limine. |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (About 28 weeks after Claim Construction Hearing) | 9:00 a.m. Jury selection and trial in Lufkin, Texas. |

1. Local counsel may appear in lieu of lead counsel so long as local counsel has sufficient knowledge of the facts and has authority to bind the client. [↑](#footnote-ref-1)
2. Before the Case Management Conference, counsel and unrepresented parties should review the most recent versions of the Federal Rules of Civil Procedure and the Local Rules for the Eastern District of Texas including Section V. The Local Rules are available on the Eastern District of Texas website (www.txed.uscourts.gov). [↑](#footnote-ref-2)
3. If a deadline falls on a Saturday, Sunday, or a legal holiday as defined in Federal Rule of Civil Procedure 6, the effective date is the first federal court business day following the deadline imposed. [↑](#footnote-ref-3)
4. To save time and space, respond only to items objected to. All others will be considered to be agreed. Opposing counsel **shall confer** in an attempt to resolve any dispute over the motions in limine within five calendar days of the filing of any response. The parties shall notify the court of all issues which are resolved. [↑](#footnote-ref-4)
5. If the parties are unable to agree on an appropriate questionnaire, the Court will submit its own questionnaire to the jury. [↑](#footnote-ref-5)