

United States District Court
Western District of Texas
Waco Division

[Plaintiff],

v.

[Defendant].

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CIVIL ACTION NO.
JUDGE ALBRIGHT

ORDER GOVERNING PROCEEDINGS – PATENT CASE

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

1. This case is SET for a Rule 16 Case Management Conference on _____ at _____. Lead counsel for each party, and all unrepresented parties, shall be present. The Court expects the parties to be prepared to discuss an overview of the claims and defenses, issues involving the case schedule and potential amendments to the Court's default scheduling order, and discovery issues and potential amendments to the Court's default discovery limits. Client representatives are welcome to attend, but such attendance is not required.
2. (10 days before the CMC) Plaintiff serves preliminary infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also produce (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
3. (Not later than 3 business days before the CMC) Lead counsel for each party shall meet and confer (either in person or by telephone), to discuss whether they believe the Court's default Scheduling Order and default Discovery Limits are appropriate for this case, and any issues relating to the management of this case they intend to raise at the CMC.
4. (14 days after the CMC) The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of each Order briefly setting forth their respective positions on items where they cannot agree.
5. (7 weeks after the CMC) Defendant serves preliminary invalidity contentions in the form of a chart setting forth where in the prior art references each element of the asserted claim(s) are found. Defendant shall also produce (1) all prior art referenced in the

invalidity contentions, and (2) technical documents sufficient to show the operation of the accused products.

6. This case is SET for a *Markman* hearing on _____ at 9:00 a.m. at _____.
7. This case is SET for a Final Pretrial Conference on _____ at 9:00 a.m. at _____.
Jury selection and trial will be held within four weeks of the pretrial conference and will be set at the Final Pretrial Conference.

DISCOVERY

Except with regard to discovery necessary for claim construction, all other discovery is stayed until after the Markman hearing. Notwithstanding this general stay of discovery, the Court will permit limited discovery by agreement of the parties, or upon request, where exceptional circumstances warrant.

Following the Markman hearing, the following discovery limits will apply to this case. The Court will consider reasonable requests to increase these limits should circumstances warrant.

1. Interrogatories: 30 per side
2. Requests for admission: 45 per side
3. Requests for Production: 75 per side
4. Fact Depositions: 70 hours per side (for both party and non-party witnesses combined)
5. Expert Depositions: 7 hours per report¹

Electronically Stored Information. As a preliminary matter, the Court will not require general search and production of email or other electronically stored information (ESI), absent a showing of good cause. If a party believes targeted email/ESI discovery is necessary, it shall propose a procedure identifying custodians and search terms it believes the opposing party should search. The opposing party can oppose, or propose an alternate plan. If the parties cannot agree, they shall contact chambers to schedule a call with the Court to discuss their respective positions.

DISCOVERY DISPUTES

A party may not file a Motion to Compel discovery unless: (1) lead counsel have met and conferred in good faith to try to resolve the dispute, and (2) the party has contacted the Court (with opposing counsel) to arrange a telephone conference to summarize the dispute and the parties respective positions. After hearing from the parties, the Court will determine if further briefing is required.

¹ For example, if a single technical expert submits reports on both infringement and invalidity, he or she may be deposed for up to 14 hours in total.

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 under this local rule shall keep it confidential and use it only for purposes of litigating the case.

CLAIM CONSTRUCTION ISSUES

Terms for Construction. The Court does not have a specific limit on the number of asserted claims or claim terms to be construed; however, the Court encourages the parties to focus on their top ten claim terms in order of importance. In cases with an unusually large number of patents or asserted claims, the Court may revisit this topic and will be open to suggestions from the parties.

Claim Construction Briefing. The Court will require simultaneous claim construction briefing with the following default page limits; however, the Court will entertain reasonable requests to increase the limits should circumstances warrant:

1. Opening Briefs – 30 pages
2. Responsive Briefs – 30 pages
3. Reply Briefs – 15 pages

Unless otherwise agreed by the parties, all simultaneous filings will take place at 5:00 p.m. CT.

Conduct of the Markman Hearing. The Court intends to set aside one full day for the *Markman* hearing; however, the Court is open to reserving more or less time, depending on the complexity of the case and input from the parties. The Court does anticipate live technology tutorials. However, if the Parties would prefer, the Court also permits the submission of technical tutorials via audio file on the date set by the Court where such tutorials may be of benefit to the Court. The Court will consider the parties suggestions on the order of argument at the Markman hearing. However, if the parties do not suggest a different procedure, the Court will allow the Plaintiff to pick the first term and then alternate by term. As a general rule, if one side proposes

“plain and ordinary meaning” at its construction, the Court wants the other party to go first.

GENERAL ISSUES

1. The Court does not have a limit on the number of motions for summary judgment (MSJs); however, the cumulative page limit for Opening Briefs for all MSJs is 50 pages per side.
2. The Court encourages the submission of briefs longer than 10 pages via audio file so that the Court can listen to the arguments. The recordings shall be made in a neutral fashion, citations need not be read as part of the recording, and each such file shall be served on opposing counsel. Counsel should contact chambers for procedures to submit audio files.
3. The Court will entertain reasonable requests to streamline the case schedule and discovery and encourages the parties to contact the Court (with opposing counsel) when such interaction might help streamline the case.

APPENIDX A – DEFAULT SCHEDULE

Deadline	Item
10 days before CMC	Plaintiff serves preliminary ² infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also produce (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
2 weeks after CMC	Deadline for Motions to Transfer
7 weeks after CMC	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the prior two years, unless the parties agree to some other timeframe.
9 weeks after CMC	Parties exchange claim terms for construction
11 weeks after CMC	Parties exchange proposed claim constructions
13 weeks after CMC	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions
14 weeks after CMC	Parties file Opening claim construction briefs, including any arguments that any claim terms are indefinite.
17 weeks after CMC	Parties file Responsive claim construction briefs,
19 weeks after CMC	Parties file Reply claim construction briefs.

² The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add claims requires leave of court so that the Court can address any scheduling issues.

20 weeks after CMC	Parties submit Joint Claim Construction Statement, optional tutorials, and consolidated briefing collated by Opening, Response, and Reply.
23 weeks after CMC (or as soon as practicable)	Markman Hearing at 9:00 a.m.
1 week after Markman hearing	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
6 weeks after Markman hearing	Deadline to add parties
8 weeks after Markman hearing	Deadline to serve Final Infringement and Invalidity Contentions.
12 weeks after Markman hearing	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.
24 weeks after Markman hearing	Close of Fact Discovery
25 weeks after Markman hearing	Opening Expert Reports
29 weeks after Markman hearing	Rebuttal Expert Reports
32 weeks after Markman hearing	Close of Expert Discovery
33 weeks after Markman hearing	Deadline to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue. The parties shall file a report within 5 business days regarding the results of the meet and confer.
34 weeks after Markman hearing	Dispositive motion deadline and <i>Daubert</i> motion deadline.
36 weeks after Markman hearing	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, designations)
38 weeks after Markman hearing	Serve objections to pretrial disclosures/rebuttal disclosures
39 weeks after Markman hearing	Serve objections to rebuttal disclosures and File Motions <i>in limine</i>

40 weeks after Markman hearing	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, designations); file oppositions to motions <i>in limine</i>
41 weeks after Markman hearing	Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
43 weeks after Markman hearing	Final Pretrial Conference
44-47 weeks after Markman hearing	Jury Selection/Trial