

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____,
Plaintiff(s),
v.
_____,
Defendant(s).

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Civil Action No. _____

[PROPOSED] PATENT SCHEDULING ORDER

TALWANI, D.J.

This scheduling order is intended to provide a reasonable timetable for discovery and claim construction in order to help ensure a fair and just resolution of this matter without undue expense or delay. All obligations set forth in Local Rule 16.6 shall apply, with specific deadlines as set forth below.

TIMETABLE FOR DISCOVERY AND MOTION PRACTICE

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rules 16.1(f) and 16.6, it is hereby ORDERED that:

Preliminary Disclosures.

1. **Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) and by this court's Notice of Scheduling Conference must be completed by _____.
2. **Automatic Patent-Related Disclosures.**
 - a. **Patentee's Preliminary Patent-Related Disclosures.** Disclosures required under Local Rule 16.6(d)(1) shall be served by _____.
 - b. **Conference Concerning Preliminary Patent Disclosures.** The conference required by Local Rule 16.6(d)(2) shall occur no later than _____.
 - c. **Accused Infringer's Preliminary Production of Technical Documents, Source Code, and Samples of Accused Products.** Disclosures required under Local Rule 16.6(d)(4) shall be served by _____.

Claim-Construction Proceedings.

3. Joint Statement.

- a. The list of claim terms to be construed and their proposed constructions required under Local Rule 16.6(e)(1)(A) shall be exchanged by _____.
- b. The conference required under Local Rule 16.6(e)(1)(B) shall occur no later than _____.¹
- c. The joint statement required under Local Rule 16.6(e)(1)(D) shall be filed no later than _____. No more than 10 claim terms shall be submitted for construction unless leave to do so is granted pursuant to Local Rule 16.6(e)(1)(C). The joint statement shall prioritize the disputed terms in order of importance. In addition, the joint statement shall note the anticipated length of time necessary for the claim-construction hearing and whether any party proposes to call witnesses, including a statement that such extrinsic evidence does not conflict with intrinsic evidence. The joint statement shall also include a proposed order in which parties will present their arguments at the claim-construction hearing, which may be term-by-term or party-by-party, depending on the issues in the case.

4. Opening Claim-Construction Briefs. Not later than _____, the parties shall simultaneously exchange and file opening claim-construction briefs required under Local Rule 16.6(e)(2).

5. Responsive Briefs. Not later than _____, the parties shall simultaneously exchange and file responsive briefs required under Local Rule 16.6(e)(4).

6. Markman Hearing. The claim-construction hearing will be set by the clerk for a date after responsive briefs are filed.

7. Post-Claim-Construction Status Conference. Within fourteen days after the court’s claim-construction ruling, the parties shall file a joint statement addressing the issues listed in Local Rule 16.6(c)(3) and stating whether a status conference would be beneficial.

Other Scheduling Provisions.

8. Amendments to Pleadings. Except for good cause shown, no motions seeking leave to add new parties or to amend the pleadings to assert new claims or defenses may be filed after _____.

¹ If the parties are unable to agree upon the terms to be construed, the parties shall include those terms they agree upon and may include additional terms pursuant to the following equation: additional terms $\leq 0.5 (10 - \text{number of agreed-upon terms})$.

9. **Fact Discovery.**
 - a. All requests for production of documents and interrogatories must be served by _____.
 - b. All requests for admission must be served by _____.
 - c. All depositions, other than expert depositions, must be completed by _____.
 - d. All discovery, other than expert discovery, must be completed by _____.

10. **Obligation to Supplement.** Supplemental disclosures under Fed. R. Civ. P. 26(e) shall be made promptly after the receipt of information by the party or counsel and, in any event, no later than the completion of fact discovery, unless good reason can be shown for why such information was not available.

11. **Close of Fact Discovery Status Conference.** A status conference will be held on or about the end of fact discovery.

12. **Expert Discovery.**
 - a. Plaintiff(s)' trial expert(s) must be designated and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed by _____.
 - b. Defendant(s)' trial experts must be designated and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed by _____.
 - c. Trial experts must be deposed by _____.

13. **Dispositive Motions.** Dispositive motions, such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings, must be filed by _____.

PROCEDURAL PROVISIONS

14. **Extension of Deadlines.** All requests to extend or modify deadlines must be made by motion and must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reasons for the requested extension; and (5) whether the opposing party consents and, if not, the reasons given for refusing to consent. The motion shall also contain a summary of the discovery, if any, that remains to be taken, and a specific date when the requesting party expects to complete the additional discovery, join other parties, amend the pleadings, or file a motion. Motions to extend or modify deadlines will be granted only for good cause shown.

If the requested extension or modification affects any other scheduled dates, a represented party must submit a proposed revised scheduling order using this template. (A *pro se* party may, but is not required to, submit a proposed revised scheduling order.)

Absent an emergency, any request for an extension or adjournment shall be made at least forty-eight hours prior to the deadline or scheduled appearance.

15. **Motions to Compel or Prevent Discovery.** Except for good cause shown, motions to compel discovery, motions for protective orders, motions to quash, motions to strike discovery responses, and similar motions must be filed no later than seven days after the close of fact discovery or the close of expert discovery, whichever deadline is relevant. If additional discovery is compelled by the court after the relevant deadline has passed, the court may enter such additional orders relating to discovery as may be appropriate.
16. **Status Conferences.** The court will schedule a status conference after (or close to) the close of fact discovery for case management purposes. Any party who reasonably believes that an additional status conference will assist in the management or resolution of the case may request one from the court upon reasonable notice to opposing counsel.
17. **Additional Conferences.** Upon request of counsel, or at the court's own initiative, additional case-management or status conferences may be scheduled.
18. **Early Resolution of Issues.** The court recognizes that, in some cases, early resolution of one or more preliminary issues may remove a significant impediment to settlement or otherwise expedite resolution of the case. Counsel are encouraged to confer and jointly advise the court of any such issues.
19. **Pretrial Conference.** Lead trial counsel are required to attend any pretrial conference.
20. **Discovery Disputes.** Counsel encountering a discovery dispute are encouraged to request a conference with the court before filing a discovery motion. Counsel who opt to file a discovery motion shall comply with the court's Standing Order on Discovery Disputes.

United States District Judge