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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Click here to enter text.,

Plaintiff,

v.

Click here to enter text.,

Defendant.

No. Click here to enter text.

**SCHEDULING ORDER
PATENT INFRINGEMENT
MARKMAN HEARING**

On [Click here to enter a date.](#), the Court held a Scheduling Conference pursuant to Federal Rule of Civil Procedure 16(b). The parties met before the conference in accordance with Rule 26(f) and prepared a Discovery Plan. On the basis of the Scheduling Conference and the Discovery Plan,

IT IS ORDERED:

1. Mandatory Initial Discovery Pilot Project. This case is subject to the Mandatory Initial Discovery Pilot Project (MIDP) implemented by General Order 17-08. The parties must comply with the requirements of the MIDP, and need not make the initial disclosures required by Federal Rule of Civil Procedure 26(a). If responses required by the MIDP have not been exchanged, they shall be exchanged by _____.

2. Deadline for Joining Parties, and Amending Pleadings. The deadline for joining parties and amending pleadings is [Click here to enter a date.](#)

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3. Deadline for Disclosure of Asserted Claims and Infringement Contentions.
The deadline for Plaintiff to serve its initial claims and infringement contentions is _____, 10 days after this Scheduling Conference.

4. Deadline for Invalidity Contentions. The deadline for Defendant to serve its initial non-infringement and invalidity contentions is _____, 45 days after Plaintiff's disclosure of asserted claims.

5. Deadline for Identification of Claims to be Construed. The deadline for identification of claims to be construed is _____, 10 days after Defendant serves its non-infringement and invalidity contentions.

6. Deadline for Claim Constructions. The deadline for filing claim constructions is _____, 20 days after the filing of the claims to be construed.

7. Deadline for Joint Claim-Construction Statement. The deadline for filing the joint claim-construction statement is _____, 60 days after the filing of the invalidity contentions.

8. Deadline for Claim-Construction Discovery. Claim-construction discovery shall close on _____, 30 days after the deadline for the filing of the joint claim-construction statement.

9. Deadline for Filing Opening Claim-Construction Brief. The deadline for filing the opening claim-construction brief is _____, 45 days after the deadline for filing the joint claim-construction statement.

10. Deadline for Filing Responsive Claim-Construction Brief. The deadline for filing the responsive claim-construction brief is _____, 14 days after the deadline for filing the opening claim-construction brief.

11. Deadline for Filing the Reply Claim-Construction Brief. The deadline for filing the reply claim construction brief is _____, 7 days after the deadline for filing the responsive claim-construction brief.

12. Markman Hearing. A *Markman* Hearing is scheduled for

1 _____, at _____ a.m./p.m. Copies of any exhibits the parties intend to
2 present at the hearing must be hand-delivered to chambers on or before _____.

3 To assist the court reporter, the parties shall prepare and bring to the hearing a Table of
4 Authorities, in alphabetical order, which includes all of the authorities on which the
5 parties will rely at the hearing.

6 13. Discovery Limitations. Depositions in this case shall be limited to 7 hours
7 each as provided in Rule 30(d)(1) of the Federal Rules of Civil Procedure. The number
8 of depositions and interrogatories shall be as limited in Rules 30(a), 31(a), and 33(a)(1) of
9 the Federal Rules of Civil Procedure. Each side also may propound up to 40 requests for
10 production of documents, including subparts, and up to 40 requests for admissions,
11 including subparts. The limitations set forth in this paragraph may be increased by mutual
12 agreement of the parties, but such an increase will not result in an extension of the
13 discovery deadlines set forth below.

14 14. Deadline for MIDP Responses and Completion of Fact Discovery. The
15 deadline for final supplementation of MIDP responses and for completing fact discovery,
16 including all disclosure required under Rule 26(a)(3), shall be _____.¹ To ensure
17 compliance with this deadline, the following rules shall apply:

18 a. Depositions: All depositions shall be scheduled to commence at
19 least five working days prior to the discovery deadline. A deposition commenced five
20 days prior to the deadline may continue up until the deadline, as necessary.

21 b. Written Discovery: All interrogatories, requests for production of
22 documents, and requests for admissions shall be served at least 45 days before the
23 discovery deadline.

24 _____

25 ¹ General Order 17-08 implements the MIDP and should be reviewed carefully. It
26 requires parties to timely supplement their MIDP responses as new information is
27 discovered. Parties who fail to timely disclose relevant information will be precluded
28 from using it in the case and may be subject to other sanctions. Parties who unreasonably
postpone disclosure of relevant information to the end of the discovery period will also be
subject to sanctions.

1 c. Notwithstanding LRCiv 7.3, the parties may mutually agree in
2 writing, without court approval, to extend the time provided for discovery responses in
3 Rules 33, 34, and 36 of the Federal Rules of Civil Procedure. Such agreed-upon
4 extensions, however, shall not alter or extend the discovery deadlines set forth in this
5 order.

6 d. Special Provisions Regarding Rule 34 Responses: Objections to
7 Rule 34 document production requests shall be stated with specificity; general or
8 boilerplate objections are not permitted. Document production in response to a Rule 34
9 request must be completed no later than the time specified in the request or another
10 reasonable time specified in the response. An objection to a Rule 34 request must state
11 whether any responsive materials have been withheld on the basis of that objection.

12 15. Deadlines for Disclosure of Experts and Completion of Expert Discovery.

13 a. The Plaintiff(s) shall provide full and complete expert disclosures as
14 required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than
15 _____.

16 b. The Defendant(s) shall provide full and complete expert disclosures
17 as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than
18 _____.

19 c. Plaintiff's rebuttal expert disclosures, if any, shall be made no later
20 than _____. Rebuttal experts shall be limited to responding to opinions stated
21 by initial experts.

22 d. Expert depositions shall be completed no later than _____.
23 As with fact witness depositions, expert depositions shall be scheduled to commence at
24 least five working days before the deadline.

25 e. No expert witness not timely disclosed will be permitted to testify
26 unless the party offering such witness demonstrates: (a) that the necessity of such expert
27 witness could not have been reasonably anticipated at the time of the deadline for
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1 disclosing such expert witness; (b) the opposing counsel or unrepresented party were
2 promptly notified upon discovery of such expert witness; and (c) that such expert witness
3 was promptly proffered for deposition. *See Wong v. Regents of the Univ. of Cal.*, 410
4 F.3d 1052, 1060 (9th Cir. 2005).

5 16. Discovery Disputes.

6 a. The parties shall not file written discovery motions without leave of
7 court. If a discovery dispute arises and cannot be resolved despite sincere efforts to
8 resolve the matter through personal consultation, the parties shall call the Court's Judicial
9 Assistant, Mary Farmer, at (602) 322-7530, to set a telephonic conference.

10 b. If a discovery dispute arises in the course of a deposition and
11 requires an immediate ruling of the Court, the parties shall jointly telephone the Court to
12 request a telephone conference regarding the dispute.

13 c. Absent extraordinary circumstances, the court will not entertain fact
14 discovery disputes after the deadline for completion of fact discovery and will not
15 entertain expert discovery disputes after the deadline for completion of expert discovery.
16 Delay in presenting discovery disputes for resolution is not a basis for extending
17 discovery deadlines.

18 17. Deadline for Filing Dispositive Motions.

19 a. Dispositive motions and motions challenging expert opinion
20 testimony shall be filed no later than _____ at 5:00 p.m. Arizona time.

21 b. No party or parties represented by the same counsel shall file more
22 than one motion for summary judgment under Rule 56 of the Federal Rules of Civil
23 Procedure unless by leave of the Court.

24 c. **Local Rule of Civil Procedure 56.1 is suspended, except for**
25 **subsection (d). The Court will decide summary judgment motions under Federal**
26 **Rule of Civil Procedure 56 only. In other words, the parties may not file separate**
27 **statements of facts or separate controverting statements of facts, and instead must**
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1 include all facts in the motion, response, or reply itself. All evidence to support a
2 motion or response that is not already part of the record must be attached to the
3 motion or response itself. Consistent with Local Rule 56.1(f), the evidence may
4 include only relevant excerpts rather than full documents. No evidence may be
5 submitted with a reply. Because no separate controverting statement of facts will be
6 permitted, the responding party in its response must carefully address all material
7 facts raised in the motion; and the same for the reply. Any fact that is ignored may
8 be deemed uncontested. Procedurally, immediately following the motion should be
9 a numerical table of contents for the exhibits. The table of contents shall include
10 only a title for each exhibit, not a description. Following the table of contents should
11 be each exhibit (unless the document already is part of the record), numbered
12 individually. Immediately following the response to the motion should be an
13 alphabetical table of contents (again, the table of contents shall include only a title
14 for each exhibit, not a description). Following the table of contents should be each
15 exhibit (unless the document already is part of the record), labeled alphabetically.
16 By way of example, citations to exhibits attached to the motion would be “(Ex. 1 at
17 7)” and citations to exhibits attached to the response would be “(Ex. D at 3).”
18 Citations to documents already part of the record shall reference the docket number
19 where the document can be found and include a pin cite to the relevant page (for
20 example, “(Doc. 15 at 4”).

21 d. A party desiring oral argument shall place the words "Oral
22 Argument Requested" immediately below the title of the motion pursuant to LRCiv
23 7.2(f). The court will issue a minute entry order scheduling oral argument as it deems
24 appropriate.

25 18. Pre-motion Conference. The Court will hold a conference with the parties
26 before motions for summary judgment are filed. The purpose of the conference will be to
27 narrow issues and focus the briefing. The parties shall exchange two-page letters
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1 describing any anticipated motions for summary judgment and responses, identifying the
2 issues and claims on which summary judgment will be sought and the basis for the
3 motions and response. The parties shall file these letters with the Court on or
4 before _____, and shall call the Court the same day to schedule a time for a
5 pre-motion conference.

6 19. Deadline for Engaging in Good Faith Settlement Talks. All parties and
7 their counsel shall meet in person and engage in good faith settlement talks no later than
8 _____. Upon completion of such settlement talks, and in no event later than
9 five working days after the deadline set forth in the preceding sentence, the parties shall
10 file with the court a joint Report on Settlement Talks executed by or on behalf of all
11 counsel. The report shall inform the Court that good faith settlement talks have been held
12 and shall report on the outcome of such talks. The parties shall promptly notify the Court
13 at any time when settlement is reached during the course of this litigation.

14 The Court will set a settlement conference before a magistrate judge upon request
15 of all parties.

16 The parties are encouraged to discuss settlement at all times during the pendency
17 of the litigation. The Court will not, however, extend the case processing deadlines
18 because the parties wish to avoid litigation expense if and when they elect to pursue
19 settlement efforts, including a settlement conference before a magistrate judge. The
20 parties should plan their settlement efforts accordingly.

21 20. The Deadlines Are Real. The parties are advised that the Court intends to
22 enforce the deadlines set forth in this order, and they should plan their litigation activities
23 accordingly. The Court will not extend the case processing deadlines because the parties
24 wish to avoid litigation expense if and when they elect to pursue settlement efforts,
25 including a settlement conference before a magistrate judge.

26 21. Briefing Requirements.

27 a. All memoranda filed with the Court shall comply with Local Rule of
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Civil Procedure 7.1(b) requiring 13 point font in text and footnotes.

b. Citations in support of any assertion in the text shall be included in the text, not in footnotes.

c. To ensure timely case processing, a party moving for an extension of time, enlargement of page limitations, leave to amend, or leave to file a document under seal shall indicate in the motion whether the non-movant opposes the request and intends to file a written response.

22. Dismissal for Failure to Meet Deadlines of This Order or of the Rules.

The parties are warned that failure to meet any of the deadlines in this order or in the Federal Rules of Civil Procedure without substantial justification may result in sanctions, **including dismissal of the action or entry of default.**

23. Limitation on Paper Courtesy Copies. Notwithstanding Section II.D.3 of the Electronic Case Filing Administrative Policies and Procedures Manual, no party shall deliver to chambers an additional paper courtesy copy of any filing unless otherwise ordered by the Court.