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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 April 12, 2017, 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. Deadline for Initial Disclosures. Initial disclosures required by Federal Rule of Civil Procedure 26(a) have already been exchanged by the parties.
2. Deadline for Joining Parties, and Amending Pleadings. The deadline for joining parties and amending pleadings is Click here to enter a date.
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

1 initial non-infringement and invalidity contentions is _____, 45 days after
2 Plaintiff's disclosure of asserted claims.

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

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

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

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

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

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

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

23 12. Markman Hearing. The *Markman* hearing shall take place within 14 days of
24 the deadline for filing the reply claim-construction brief.

25 **IT IS FURTHER ORDERED** that a *Markman* Hearing is scheduled for
26 _____, at _____ a.m./p.m. Copies of any exhibits the parties intend to
27 present at the hearing must be hand-delivered to chambers on or before _____.

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

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

12 14. Deadline for Completion of Fact Discovery. The deadline for completing
13 fact discovery, including all disclosure required under Rule 26(a)(3), shall be
14 _____ . To ensure compliance with this deadline, the following rules shall apply:

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

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

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

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

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

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

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

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

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

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

25 16. Interim Scheduling Conference. After completion of expert depositions, the
26 parties shall appear telephonically for an interim scheduling conference on
27 _____. Counsel for ****Plaintiff/Defendant**** shall make the necessary
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1 arrangements for the conference call. All parties participating in the conference call shall
2 do so via a landline only. The use of cellular phones will not be permitted.

3 17. Discovery Disputes.

4 a. When the parties have a dispute that could properly be addressed
5 pursuant to Rule 26(c) or 37(a), they shall not file written motions. If a discovery dispute
6 arises and cannot be resolved despite sincere efforts through personal consultation, the
7 parties shall call the Court's Judicial Assistant, Michele Morgan, at (602) 322-7530, to
8 set a telephonic conference and file a good faith consultation certificate complying with
9 Rule 37(a)(1). If the parties believe it would assist the Court, the parties may file a joint
10 statement of the dispute, not to exceed 3 pages, one and one-half page per side. The joint
11 statement may be single-spaced. The purposes of the joint statement are to provide the
12 Court with information about the dispute which may be difficult to succinctly describe to
13 the Court over the phone, and to make a record of the discovery sought. If a party
14 contends that the discovery of ESI should be disallowed or limited due to undue burden
15 or expense, it must file an affidavit of an expert describing the burden and estimating the
16 expense that would be incurred. A discovery motion may be filed only after the parties
17 have discussed the discovery dispute with the Court and the Court has authorized the
18 filing of a discovery dispute motion.

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

22 c. Absent extraordinary circumstances, the court will not entertain fact
23 discovery disputes after the deadline for completion of fact discovery and will not
24 entertain expert discovery disputes after the deadline for completion of expert discovery.
25 Delay in presenting discovery disputes for resolution is not a basis for extending
26 discovery deadlines.

27 18. Deadline for Filing Dispositive Motions.

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a. Dispositive motions and motions challenging expert opinion testimony shall be filed no later than _____. Such motions must comply in all respects with the Federal Rules of Civil Procedure and the Local Rules.

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

c. Local Rule of Civil Procedure 56.1 is suspended, except for subsection (d). The Court will decide summary judgment motions under Federal Rule of Civil Procedure 56 only. In other words, the parties may not file separate statements of facts or separate controverting statements of facts, and instead must include all facts in the motion, response, or reply itself. All evidence to support a motion or response that is not already part of the record must be attached to the motion or response itself. Consistent with Local Rule 56.1(f), the evidence may include only relevant excerpts rather than full documents. No evidence may be submitted with a reply. Because no separate controverting statement of facts will be permitted, the responding party in its response must carefully address all material facts raised in the motion; and the same for the reply. Any fact that is ignored may be deemed uncontested. Procedurally, immediately following the motion should be a numerical table of contents for the exhibits. The table of contents shall include only a title for each exhibit, not a description. Following the table of contents should be each exhibit (unless the document already is part of the record), numbered individually. Immediately following the response to the motion should be an alphabetical table of contents (again, the table of contents shall include only a title for each exhibit, not a description). Following the table of contents should be each exhibit (unless the document already is part of the record), labeled alphabetically. By way of example, citations to exhibits attached to the motion would be “(Ex. 1 at 7)” and citations to exhibits attached to the response would be “(Ex. D at 3).”

1 Citations to documents already part of the record shall reference the docket number
2 where the document can be found and include a pin cite to the relevant page (for
3 example, “(Doc. 15 at 4)”). For purposes of this procedure, the page limitations in
4 LR 7.2(e) shall be inclusive of the incorporated facts, but exclusive of any
5 evidentiary attachments.

6 d. Failure to respond to a motion within the time periods provided in
7 LRCiv 7.2 will be deemed a consent to the denial or granting of the motion and the Court
8 may dispose of the motion summarily pursuant to LRCiv 7.2(i).

9 e. A party desiring oral argument shall place the words "Oral
10 Argument Requested" immediately below the title of the motion pursuant to LRCiv
11 7.2(f). The court will issue a minute entry order scheduling oral argument as it deems
12 appropriate.

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

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

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

21. Briefing Requirements.

a. All memoranda filed with the Court shall comply with Local Rule of 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.

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. Requirement for Paper Courtesy Copies.

Pursuant to Section II.D.3 of the Electronic Case Filing Administrative Policies and Procedures Manual, a paper courtesy copy of dispositive motions and responses and replies thereto and any document exceeding 10 pages in length shall be either post-marked and mailed directly to the judge or hand-delivered to the judge's mail box located in the courthouse the next business day after the electronic filing. A copy of the face page of the Notice of Electronic Filing shall be appended to the last page of the courtesy copy. Courtesy copies of documents too large for stapling must be bound with a metal prong fastener at the top center of the document or submitted in three-ring binders. If courtesy copies are not delivered within three days of the file date, the court may strike the pleading summarily for failure to follow court rules and this order.

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