

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

No. CV-_____-JJT

**RULE 16 SCHEDULING ORDER IN
A PATENT CASE**

Pursuant to the terms of the Joint Proposed Case Management Plan and the representations made by the parties at the Pretrial Scheduling Conference, all parties shall comply with the deadlines established in this Order.

IT IS ORDERED as follows:

The Court will strictly enforce the deadlines set forth in this Rule 16 Scheduling Order. Furthermore, the Court will not grant extensions to the dispositive motion cutoff date due to case processing problems, discovery disputes, or settlement negotiations.

The Federal Rules of Civil Procedure (Fed. R. Civ. P.) in effect on the date Plaintiff(s) filed this lawsuit shall apply to all proceedings concerning this case, except to the extent they are inconsistent with this Order, in which instance the provisions of this Order control.

1. All Initial Disclosures as defined in Fed. R. Civ. P. 26(a), if not already disclosed prior to the Scheduling Conference, shall be made no later than

_____.

1 2. To satisfy the requirements of Fed. R. Civ. P. 26(a), the parties shall file with
2 the Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual
3 disclosures.

4 3. Motions to amend the Complaint and to join additional parties shall be filed
5 no later than _____.

6 4. This case includes a claim of patent infringement, and the Court must
7 construe the meaning of the terms used in the asserted patent claims as a matter of law,
8 pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). To help
9 focus the Court’s efforts at the hearing, the Court will require Plaintiff to disclose its
10 infringement contentions and Defendant to disclose any invalidity contentions prior to the
11 hearing. (*See, e.g.*, Patent Local Rules ¶¶ 3-1, 3-3 (N.D. Cal. 2023).) Briefing for the claim
12 construction shall be completed as follows:

Event	Deadline
Service of Initial Infringement Contentions	
Service of Initial Noninfringement, Unenforceability and Invalidity Contentions	
Service of Response to Noninfringement, Unenforceability and Invalidity Contentions	
Deadline to Supplement Infringement, Enforceability and Validity Contentions without leave of Court	
Exchange Proposed Claim Terms and Proposed Constructions	
Meet and Confer to Select Agreed Claim Terms	
Deadline to Supplement Noninfringement, Unenforceability and Invalidity Contentions without leave of Court	
Filing of Opening Claim Construction Briefs with Expert Disclosures	
Filing of Responsive Claim Construction Briefs	

Event	Deadline
Filing of Joint Claim Construction Chart	
Markman Hearing	

5. Fact discovery shall be completed by _____.

6. All parties shall disclose the identity of all persons whom they may call at trial to present evidence under Rules 702, 703, 704, or 705 of the Federal Rules of Evidence (Fed. R. Evid.) no later than **30 days after Claim Construction Order**. All parties shall disclose the identity of all persons providing rebuttal expert testimony no later than **30 days after Disclosure of Affirmative Expert Report(s)**. These disclosures shall be full and complete as required by Fed. R. Civ. P. 26(a)(2)(A)-(C).

The disclosures of the identities of all persons whom a party may call at trial to present evidence under Fed. R. Evid. 702, 703, 704, or 705 shall also include all of the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) if the witness is either (1) retained or specifically employed to provide expert testimony in the case, or (2) is an agent or employee of the party offering the testimony whose duties regularly involve giving expert testimony. No deposition of any expert witness shall occur before the disclosures concerning expert witnesses mandated by this Order are made. Expert reports disclosed under Fed. R. Civ. P. 26(a)(2)(B) must set forth “the testimony the witness is expected to present during direct examination, together with the reasons therefor.” Full and complete disclosures of such testimony are required on or before the dates set forth above; absent truly extraordinary circumstances, parties will not be permitted to supplement their expert reports after these dates.

7. Discovery by interrogatory shall be governed by Fed. R. Civ. P. 33 unless otherwise ordered by the Court. Therefore, there is a limit of twenty-five (25) interrogatories, including discrete subparts.

1 8. With regard to responses to requests for admission, requests for production,
2 and interrogatories, the Federal Rules of Civil Procedure do not permit “general” or
3 “global” objections. Accordingly, the Court will neither consider nor rule on objections
4 that are not specific to the individual request propounded.

5 9. Depositions shall be limited as provided by Fed. R. Civ. P. 30 and 31.

6 10. The parties shall not file written discovery motions without leave of the
7 Court. Except during a deposition, if a discovery dispute arises and cannot be resolved
8 despite sincere efforts to resolve the matter through personal consultation (in person or by
9 telephone), the parties shall jointly file (1) a brief written summary of the dispute, not to
10 exceed one page per side, with an explanation of the position taken by each side; and (2) a
11 joint written certification that counsel or the parties have attempted to resolve the matter
12 through personal consultation and sincere effort as required by Local Rule of Civil
13 Procedure (LRCiv) 7.2(j) and have reached an impasse. If the opposing party has refused
14 to personally consult, the party seeking relief shall describe the efforts made to obtain
15 personal consultation. Upon review of the filed written summary of the dispute, the Court
16 may set a telephonic conference, order written briefing, or decide the dispute without
17 conference or briefing. Any briefing ordered by the Court shall also comply with LRCiv
18 7.2(j). If a discovery dispute arises in the course of a deposition and requires an immediate
19 ruling of the Court—a circumstance that should be exceedingly rare—the parties shall
20 jointly contact the Court telephonically. The Court will not entertain discovery disputes
21 after the close of discovery absent truly extraordinary circumstances.

22 11. All discovery must be completed by **30 days after Disclosure of Rebuttal**
23 **Expert Report(s)**, including depositions of parties, witnesses and experts; answers to
24 interrogatories; and supplements to interrogatory answers. This deadline does not alter the
25 duties and obligations imposed on the parties by Fed. R. Civ. P. 26(e). Each party shall
26 conduct discovery in an expeditious manner so as to complete any and all discovery by the
27 deadline. “Complete” includes the time to propound discovery, the time to answer all
28 propounded discovery, the time for the Court to resolve all discovery disputes, and the time

1 for the parties to conduct any final discovery necessitated by the Court’s ruling on any
2 discovery disputes. Thus, the Court will view with disfavor any “last minute” or “eleventh
3 hour” discovery activity that leaves insufficient time to undertake additional discovery and
4 requires an extension of the discovery deadline, and, in such an instance, the Court may
5 deny a requested extension, exclude evidence, or impose other sanctions.

6 12. Although General Order 20-21, dated April 16, 2020, made May 1, 2020 the
7 termination date of the Mandatory Initial Discovery Project (“MIDP”) initiated in this
8 District on May 1, 2017 by General Order 17-08, the Court will enforce one aspect of
9 General order 17-08 in this case. With regard to the duty to supplement discovery under
10 Fed. R. Civ. P. 26(e), the parties must supplement initial disclosures as well as responses
11 to other discovery requests within the 30-days-from-discovery-or-revelation deadline set
12 by General Order 17-08 at 3 ¶ 8. (See General Order 17-08, as amended Nov. 1, 2018.)

13 13. The parties must complete all pre-trial disclosures required under
14 Fed. R. Civ. P. 26(a)(3), of all exhibits to be used and all witnesses to be called at trial, on
15 or before **30 days after Disclosure of Rebuttal Expert Report(s)** so that the parties can
16 complete meaningful discovery necessitated by those disclosures before the discovery
17 deadline. This Order supersedes the “30 days before trial” disclosure deadline contained in
18 Fed. R. Civ. P. 26(a)(3). Therefore, (1) failure to timely supplement responses and
19 disclosures made under Fed. R. Civ. P. 26(a), including witnesses and exhibits for trial; (2)
20 failure to timely supplement responses to any valid discovery requests; and (3) attempts to
21 include witnesses or exhibits in the Joint Proposed Final Pretrial Order that were not
22 previously disclosed in a timely manner may result in the exclusion of such evidence at
23 trial or the imposition of other sanctions pursuant to Fed. R. Civ. P. 37, the Local Rules of
24 the District Court, and the inherent power of the Court.

25 14. Good faith settlement discussions shall be held no later than **30 days after**
26 **Completion of Expert Discovery.**

1 15. All dispositive motions, **including *Daubert* motions**,¹ shall be filed no later
2 than **30 days after Completion of Expert Discovery**. A party or parties represented by
3 the same lawyer shall file **no more than one motion for summary judgment** unless leave
4 of Court is obtained.

5 16. Any party filing a motion for summary judgment, motion for partial
6 summary judgment, or response thereto, shall not file a statement of facts or controverting
7 statement of facts exceeding 10 pages in length. LRCiv 56.1 is clear that parties' statements
8 of fact or controverting fact "should include only those facts on which the party relies" in
9 support of the motion or response.

10 17. All parties are specifically admonished that pursuant to LRCiv 7.2(i),

11 if a motion does not conform in all substantial respects with the
12 requirements of this Local Rule, or if the unrepresented party
13 or counsel does not serve and file the required answering
14 memoranda, or if the unrepresented party or counsel fails to
15 appear at the time and place assigned for oral argument, such
non-compliance may be deemed a consent to the denial or
granting of the motion and the Court may dispose of the motion
summarily.

16 18. If no dispositive motions are pending before the Court when the dispositive
17 motion deadline has passed, Plaintiff(s) shall file and serve within ten (10) days of the
18 dispositive motion deadline, a Notice of Readiness for a status conference. If a dispositive
19 motion is filed, the Court will schedule a status conference as necessary upon resolution of
20 the motion.

21
22
23
24
25
26
27
28

¹ Evidentiary motions made under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S.
579 (1993).