

## PART III—PATENT PRACTICE

### LPR 1-1. TITLE

These are the Local Rules of Practice for Patent Cases before the United States District Court for the District of Nevada.

### LPR 1-2. SCOPE AND CONSTRUCTION

These rules supplement the Federal Rules of Civil Procedure and apply to all civil actions filed in or transferred to this court that allege infringement of a utility patent in a complaint, counterclaim, cross-claim, or third-party claim, or that seek a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable. ~~The Local Rules of Civil Practice in Part II also apply to these actions, except to the extent that they are inconsistent with these Patent Local Rules. For the purposes of these rules, citations~~ These Rules apply to Title 35 of the United States Code refer to both pre-Leahy-Smith America Invents Act statutes (“AIA”) patents and post-AIA patents. For purposes of these Local Patent Rules, a “pre-AIA” and “post-AIA” patent is defined pursuant to 35 U.S.C. §100 (Note) AIA First Inventor to File Provisions. The Local Rules of Civil Practice in Part II also apply to these actions, except to the extent that they are inconsistent with these Local Patent Rules.

### LPR 1-3. MODIFICATION OF RULES

The court may apply all or part of these rules to any case already pending on the effective date of these rules. The court may modify the obligations and deadlines of these rules based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the patents, claims, products, processes, or parties involved. Modifications may be proposed by one or more parties at the mandatory Fed. R. Civ. P. 26(f) meeting (“Initial Scheduling Conference”), and then submitted in the stipulated discovery plan and scheduling order. Modifications also may be proposed by request upon a showing of good cause. Before submitting any request for a modification, the parties must meet and confer for purposes of reaching an agreement, if possible, on any modification.

### ~~LPR 1-4. CONFIDENTIALITY~~

### LPR 1-4. GENERAL PROVISIONS

- (a) Confidentiality. Discovery and ~~initial~~ disclosures under these rules cannot be withheld on the basis of confidentiality absent court order. Not later than 14 days after the Initial Scheduling Conference, the parties must file a proposed protective order. Pending entry of a discovery confidentiality protective order, disclosures deemed confidential by a party must be produced with a confidential designation (e.g., “Confidential—Attorneys Eyes Only”), and the disclosure of the information will be limited to each party’s outside attorney of record, including employees of outside attorney of record, and used only for litigation purposes.

- (b) Compliance. A party who contends that an opposing party has not complied with its disclosure obligations set forth herein is not excused from complying with its own disclosure obligations to the best of its ability.
- (c) Patent Ineligibility Motions under 35 U.S.C. § 101. A party moving to dismiss one or more claims as patent-ineligible under § 101 must demonstrate in its motion, if appropriate, that there is no factual issue, claim construction or otherwise, that the court need determine before deciding dismissal under 35 U.S.C. § 101. The filing of a § 101 motion before a Claim Construction Order must not delay any date in the Discovery Plan and Scheduling Order, unless otherwise ordered by the court.
- (d) Special Masters. In a patent case, the court may appoint a Special Master under Fed. R. Civ. P. 53 according to the parties' agreement or its own discretion. During the parties' Fed. R. Civ. P. 26(f) conference, the parties must meet and confer on whether the appointment of a Special Master is appropriate. If the parties agree to use a Special Master, the role of the Special Master must be set forth in the Discovery Plan and Scheduling Order. Nothing in this Rule prohibits a party from requesting a Special Master in the absence of an agreement. If a Special Master is appointed the cost of the Special Master must be split, half to plaintiff and half to defendant, unless otherwise ordered by the court.

**LPR 1-5. CERTIFICATION OF DISCLOSURES**

- (a) All statements, disclosures, and charts filed or served under these rules must be dated and signed by the attorney of record. The attorney's signature must attest that, to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the disclosure is made in good faith and the information contained in the statement, disclosure, or chart is correct at the time it is made and provides a complete statement of the information presently known to the party. Disclosures required by these rules are in addition to others required under the Federal Rules of Civil Procedure.
- (b) The parties must file with the court a notice certifying that all disclosures required under LPR 1-6 through 1-11 have been timely provided. The parties must file the notice within seven days after the deadline for service of the disclosures required under LPR 1-10. Any variation from these deadlines requires court approval.

**LPR 1-6. ~~INITIAL~~ DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

Within 14 days after the Initial Scheduling Conference under Fed. R. Civ. P. 26(f), a party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions. Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions must contain the following information:

- (a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;
- (b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;
- (c) A chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6) (pre-AIA) or 35 U.S.C. § 112(f) (post-AIA), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;
- (d) For each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each party in the direct infringement must be described;
- (e) Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;
- (f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;
- (g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and
- (h) If a party claiming patent infringement alleges willful infringement, the basis for the allegation.

**LPR 1-7. DOCUMENT PRODUCTION ACCOMPANYING ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

With the Disclosure of Asserted Claims and Infringement Contentions, the party claiming patent infringement must produce to each opposing party or make available for inspection and copying:

- (a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third-party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention before the date of application for the patent in suit. A party's production of a document required herein does not constitute an admission that the document evidences or is prior art under 35 U.S.C. § 102;
- (b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified under LPR 1-6(f), whichever is earlier;
- (c) A copy of the file history for each patent in suit;
- (d) All documents evidencing ownership of the patent rights by the party asserting patent infringement; and
- (e) If a party identifies instrumentalities under LPR 1-6(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies on as embodying any asserted claims. The producing party must separately identify by production number the documents that correspond to each category.

**LPR 1-8. ~~INITIAL~~ DISCLOSURE OF NON-INFRINGEMENT, INVALIDITY, AND UNENFORCEABILITY CONTENTIONS**

Within 45 days after service of the ~~Initial~~ Infringement Contentions, each party opposing a claim of patent infringement must serve on all other parties Non-Infringement, Invalidity, and Unenforceability Contentions that must include:

- (a) A detailed description of the factual and legal grounds for contentions of non-infringement, if any, including a clear identification of each limitation of each asserted claim alleged not to be present in the Accused Instrumentality;
- (b) A detailed description of the factual and legal grounds for contentions of invalidity, if any, including an identification of the prior art relied upon and where in the prior art each element of each asserted claim is found. Each prior-art patent must be identified by its number, country of origin, and date of issue. Each prior-art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) (pre-AIA) or 35 U.S.C. § 102(a) (post-AIA) must be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity who made the use or made and received the offer, or the person or entity who made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) (pre-AIA) or disclosures under 35 U.S.C. § 102(b) (post-AIA) must be

identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) (pre-AIA) or 35 U.S.C. § 102(b) (post-AIA) -must be identified by providing the identities of the person(s) or entities involved in, and the circumstances surrounding, the making of the invention before the patent applicant(s);

- (c) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;
- (d) A chart identifying specifically where in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that a party contends is governed by 35 U.S.C. § 112(6) (pre-AIA) or 35 U.S.C. § 112(f) (post-AIA), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;
- (e) A detailed statement of any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2) (pre-AIA) or 35 U.S.C. § 112(b) (post-AIA) or failure of enablement, best mode, or written description requirements under 35 U.S.C. § 112(1); ~~and~~ (pre-AIA) or 35 U.S.C. § 112(a) (post-AIA);
- (f) A detailed description of the factual and legal grounds for contentions of unenforceability (including misuse), if any, including the identification of all dates, conduct, persons involved, and circumstances relied on for the contention, and when unenforceability is based on any alleged affirmative misrepresentation or omission of material fact committed before the United States Patent and Trademark Office, the identification of all prior art, dates of the prior art, dates of relevant conduct, and persons responsible for the alleged affirmative misrepresentation or omission of material fact; ~~and~~
- (g) A statement whether the party intends to petition for review or reexamination before the United States Patent and Trademark Office and, if so, the scope of such petition. If a party indicates its intention to file a petition for review or reexamination, it must file a notice of such intention with the court and include the contemplated scope of such petition.

**LPR 1-9. DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS**

At the time of service of the Non-Infringement, Invalidity, and Unenforceability Contentions, each party defending against patent infringement must also produce to each opposing party or make available for inspection and copying:

- (a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an

Accused Instrumentality identified by the patent claimant in its LPR 1-6(c) chart; and

- (b) A copy or sample of the prior art identified under LPR 1-8(b) that does not appear in the file history of the patent(s) at issue. To the extent the item is not in English, an English translation of the portion(s) relied on must be produced. The producing party must separately identify by production number the documents that correspond to each category.

**LPR 1-10. RESPONSE TO ~~INITIAL NON-INFRINGEMENT, INVALIDITY, AND UNENFORCEABILITY~~ CONTENTIONS**

Within 14 days after service of the ~~initial~~ Non-Infringement, Invalidity, and Unenforceability Contentions, each party claiming patent infringement must serve on all other parties its response to ~~Non-Infringement, the~~ Invalidity and Unenforceability Contentions. The response must include a detailed description of the factual and legal grounds responding to each contention of ~~non-infringement; invalidity (including whether the party admits to the identity of elements in asserted prior art and, if not, the reason for denial); and unenforceability.~~

**LPR 1-11. DISCLOSURE REQUIREMENT IN PATENT CASES FOR DECLARATORY JUDGMENT OF INVALIDITY**

In all cases in which a party files a complaint seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, each party seeking a declaratory judgment must serve on all other parties its ~~initial~~ Non-Infringement, Invalidity, and Unenforceability Contentions and corresponding LPR 1-9 document production within 14 days after the Initial Scheduling Conference. Within 45 days after service of the ~~initial~~ Non-Infringement, Invalidity, and Unenforceability Contentions, each party opposing the declaratory judgment must serve on all other parties its response to these ~~initial~~ contentions and, if the opposing party asserts a claim for patent infringement, its ~~initial~~ Disclosure of Asserted Claims and Infringement Contentions, including corresponding LPR 1-7 document production. LPR 1-11 does not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

**LPR 1-12. AMENDMENT TO DISCLOSURES**

~~Amendment of initial disclosures required by these rules may be made for good cause without leave of the court anytime before the discovery cut-off date. Thereafter, the disclosures are final and amendment of the disclosures may be made only by court order upon a timely Other than as provided in LPR 1-XXb, no other amendments to disclosures may be made other than as set forth herein absent a showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the nonmoving party, support a finding of good cause include: (a) ~~a claim construction by the court different from that proposed by the party seeking amendment;~~ (b) material changes to the other party's contentions; (b) recent discovery of material prior art despite earlier diligent search; and (ec) recent discovery of nonpublic information about the Accused Instrumentality despite earlier diligent search. The duty to~~

supplement discovery responses does not excuse the need to obtain leave of the court to amend contentions.

**LPR 1-XXa. Disclosure Requirements for Patent Cases Arising under 21 U.S.C. § 355 (Hatch-Waxman Act)**

The following provision applies to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (“the Hatch-Waxman Act”). This provision takes precedence over any conflicting provisions in LPR 1-6 to 1-12 for all cases arising under 21 U.S.C. § 355.

(a) Upon the filing of a responsive pleading to the complaint, the Defendant(s) must produce to Plaintiff(s) the entire Abbreviated New Drug Application (“ANDA”) or New Drug Application that is the basis of the case in question.

(b) Not more than 7 days after the Initial Scheduling Conference, Plaintiff(s) must identify the asserted claims.

(c) Not more than 14 days after the disclosures required by subsection (b), the Defendant(s) must provide to Plaintiff(s) the written basis for its claims of noninfringement, invalidity, or unenforceability for any patents referred to in Defendant(s) Paragraph IV Certification. This written basis must contain all disclosures required by LPR 1-8 and must be accompanied by the production of documents required by LPR 1-9.

(d) Not more than 45 days after the disclosure of the written basis for any defense of non-infringement as required by subsection (c), Plaintiff(s) must provide Defendant(s) with its infringement contentions and response to invalidity and unenforceability contentions for all patents referred to in Defendant(s) Paragraph IV Certification, which must contain all disclosures required by LPR 1-6 and 1-10 and must be accompanied by the production of documents required by LPR 1-7 and 1-11.

(e) Each party that has an ANDA application pending with the Food and Drug Administration (“FDA”) that is the basis of the pending case must: (1) notify the FDA of any and all motions for injunctive relief no later than 3 business days after the date on which such a motion is filed; and (2) provide a copy of all correspondence between itself and the FDA pertaining to the ANDA application to each party asserting infringement, or set forth the basis of any claim of privilege for such correspondence, no later than 7 days after the date it sends or receives any such correspondence.

(f) Unless informed of special circumstances, the court intends to set all Hatch-Waxman cases for final pretrial hearing at or near 24 months from the date of the filing of the complaint. After entry of the Scheduling Order, the parties will file a stipulation with the court requesting the setting of a trial date.

**LPR 1-13. EXCHANGE OF PROPOSED TERMS FOR CONSTRUCTION**

Not later than 90 days after the Initial Scheduling Conference under Fed. R. Civ. P. 26(f), each party must serve on each other party a list of patent claim terms that the party contends

should be construed by the court, and identify any claim term that the party contends should be governed by 35 U.S.C. § 112(6-) (pre-AIA) or 35 U.S.C. § 112(f) (post-AIA). The parties must thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties must jointly identify the terms likely to be most significant to resolving the parties' dispute, including those terms for which construction may be case or claim dispositive.

**LPR 1-14. EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE**

Not later than 14 days after the exchange of lists under LPR 1-13, the parties must simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each Preliminary Claim Construction must also, for each term that any party contends is governed by 35 U.S.C. § 112(6) (pre-AIA) or 35 U.S.C. § 112(f) (post-AIA), identify the structure(s), act(s), or material(s) corresponding to that term's function.

At the same time the parties exchange their respective Preliminary Claim Constructions, each party must also:

- (a) Identify all references from the specifications or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence must be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party also must provide a description of the substance of that witness's proposed testimony that includes a list of any opinions to be rendered in connection with claim construction; and
- (b) Schedule a time for counsel to meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

**LPR 1-15. JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Not later than 14 days after the exchange of Preliminary Claim Constructions and Extrinsic Evidence under LPR 1-14, the parties must prepare and submit to the court a Joint Claim Construction and Prehearing Statement, which must contain the following information:

- (a) The construction of those terms on which parties agree;
- (b) Each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to,



as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

- (c) An identification of the terms whose construction will be most significant to the resolution of the case. The parties must also identify any term whose construction will be case or claim dispositive;
- (d) The anticipated length of time necessary for the Claim Construction Hearing; ~~and~~
- (e) Whether one or more parties seeks to provide a tutorial, and, if so, the anticipated length of time for such tutorial(s);
- (f) Three potential dates on which a Claim Construction Hearing could be held. These dates must be within 60 days of the date by which claim construction briefing is to be completed; and
- (e)(g) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of those witnesses, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction. Terms to be construed by the court must be included in a chart that sets forth the claim language as it appears in the patent with terms and phrases to be construed in bold and include each party's proposed construction and any agreed proposed construction.

#### **LPR 1-16. CLAIM CONSTRUCTION BRIEFING**

Not later than 21 days after submitting to the court the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement (or the party asserting invalidity if there is no infringement issue present in the case) must serve and file an opening claim construction brief and any evidence supporting its claim construction.

Not later than 21 days after service of the opening brief, each opposing party must serve and file its responsive brief and supporting evidence.

Not later than ~~seven~~7 days after service on it of a responsive brief, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, must serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

Deviations from the claim construction positions submitted in the Joint Claim Construction and Prehearing Statement will be permitted only upon a showing of good cause.

#### **LPR 1-17. CLAIM CONSTRUCTION HEARING AND ORDER**

The court ~~may intend to conduct~~conduct a Claim Construction Hearing; ~~if~~unless it believes a hearing is ~~necessary~~unnecessary for construction of the claims. If the court determines a hearing is not necessary, it will issue an order stating that no hearing will be held. A party may requestIf a hearing is conducted the court will, schedule permitting, hold such

hearing within 60 days of the completion of claim construction briefing under LPR 1-16 in accordance with a date set forth in the Joint Claim Construction and Prehearing Statement. Except in special circumstances, the court intends to issue a Claim Construction Order within 60 days of either a) the date of the Claim Construction Hearing, if one is held, or b) the court's order stating that no Claim Construction Hearing will be held.

#### **LPR 1-18. AMENDING CLAIM CONSTRUCTION SCHEDULE**

The claim- construction schedule under this rule may be amended with leave of the court if circumstances warrant, including the court's decision to adjudicate issues regarding patent validity, patent enforceability, or both before claim construction is necessary.

#### **LPR 1-XXb. POST-CLAIM CONSTRUCTION AMENDMENT OF CONTENTIONS**

Within 14 days of a Claim Construction Order the parties are required to meet and confer in order to reasonably limit the number of claims and prior art references asserted. Within 30 days of a Claim Construction Order, the parties are to amend their disclosures accordingly, and include any other amendments to their disclosures at that time.

#### **LPR 1-XXc. OPINION OF COUNSEL DEFENSES (Left unnumbered for now, renumbering and correction of internal cross-references to be completed if adopted)**

Within 30 days of a Claim Construction Order, each party opposing a claim of patent infringement that will rely on an opinion of counsel as part of a defense must:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

(b) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of this LPR 1-XX will not be permitted to rely on an opinion of counsel as part of a defense absent a stipulation of all parties or by order of the court, which must be entered only upon a showing of good cause.

#### **LPR 1-19. MANDATORY SETTLEMENT CONFERENCES FOR PATENT CASES**

Mandatory settlement conferences for patent cases must be conducted by the magistrate judge assigned to the case as follows:

~~(a) — A Pre-Claim Construction Settlement Conference must be held within 30 days after the parties have submitted all initial disclosures and responses thereto as required under LPR 1-6 through LPR 1-12;~~

~~(b)(a)~~ A Post-Claim Construction Order Settlement conference must be held within 30 days after entry of the Claim Construction Order; and

~~(e)(b)~~ A Pretrial Settlement Conference must be held within 30 days after filing the Pretrial Order or further order of the court.

**LPR 1-20. STAY OF FEDERAL COURT PROCEEDINGS**

The court may order a stay of litigation pending the outcome of any reexamination or review proceeding before the United States Patent and Trademark Office that concerns a patent at issue in the federal court litigation. Whether the court stays litigation upon the request of a party will depend on the circumstances of each particular case, including without limitation: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and the trial of the case, and (3) whether discovery is complete; and ~~(4) whether~~ a trial date has been set.

**LPR 1-21. GOOD FAITH PARTICIPATION**

A failure to make a good-faith effort to provide ~~initial~~ disclosures, narrow the instances of disputed claim-construction terms, reduce the number of claims and prior art references asserted, participate in the meet-and-confer process, or comply with any other obligations under these rules may expose an attorney to sanctions, including under 28 U.S.C. § 1927.

**LPR 1-22. ~~USE OF COURT APPOINTED MASTERS~~**

~~In a patent case, the court may appoint a master under Fed. R. Civ. P. 53.~~

**LPR 1-23. FORM OF DISCOVERY PLAN AND SCHEDULING ORDER**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

_____	)	
Plaintiff,	)	Case No.
	)	
vs.	)	[SAMPLE] DISCOVERY PLAN AND
	)	SCHEDULING ORDER
_____	)	
Defendant.	)	SPECIAL SCHEDULING REVIEW
	)	REQUESTED FOR A PATENT CASE
_____	)	

Under Fed. R. Civ. P. 26(f), Local Rule 26-1, and Patent Local Rules 16.1-1 et seq., the respective parties conducted a discovery-planning conference on **January \_\_, 20\_\_**, and hereby submit to the court the following proposed Discovery Plan and Scheduling Order:

1. Discovery Cut-Off	<b>October __, 20__ (270 days)</b>
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2. Joint Protective Order	<b>January __, 20__</b> [14 days after discovery-planning conference]
3. Disclosure of Rule 26(a) Initial Disclosures, Asserted Claims, and Infringement Contentions	<b>January __, 20__</b>
4. Disclosure of Non-Infringement, Invalidity, and Unenforceability Contentions	<b>March __, 20__</b> [45 days later]
5. Response to <del>Non-Infringement</del> <u>Invalidity and Unenforceability</u> Contentions	<b>March __, 20__</b> [14 days later]
<del>6. Three Proposed Dates for Pre-Claim Construction Settlement Conference</del>	<del><b>April __, 20__; April __, 20__; April __, 20__</b> [3 proposed dates that are within 30 days after the completion of the Initial Disclosures and Responses]</del>
<del>7. Motion to Amend Pleadings/Parties</del>	<del><b>July __, 20__</b> [90 days to close of discovery]</del>
<del>8. Expert Designations</del>	<del><b>August __, 20__</b> [60 days to close of discovery, or as the parties may stipulate after claim construction order issued by court]</del>
<del>9. Rebuttal Expert Designations</del>	<del><b>September __, 20__</b> [30 days to close of discovery]</del>
<del>10. Interim Status Report</del>	<del><b>August __, 20__</b> [60 days to close of discovery]</del>
<del>11. Exchange of Proposed Terms of Construction</del>	<del><b>April __, 20__</b> [90 days from Scheduling Conference]</del>
<del>12. Exchange of Preliminary Claim Construction</del>	<del><b>April __, 20__</b> [14 days later]</del>
<del>13. Submit Joint Claim Construction and Prehearing Statement</del>	<del><b>April __, 20__</b> [14 days later]</del>
<del>14. Opening Claim Construction Brief</del>	<del><b>May __, 20__</b> [21 days later]</del>
<del>15. Response to Claim Construction Brief</del>	<del><b>June __, 20__</b> [21 days later]</del>
<del>16. Reply Claim Construction Brief and Matter Submitted to court for Hearing</del>	<del><b>June __, 20__</b> [7 days later]</del>
<del>17. Claim Construction Tutorials, Hearing, and Order from the court</del>	<del><b>July __, 20__</b> [within <del>28</del><u>60</u> days after the Reply brief is filed, the court will complete its hearing, and issue its order. <u>within an additional 60 days.</u> If the court is unable to issue its order within <del>28</del><u>120</u> days after submission of the Reply brief, the court may reset expert disclosure deadlines as requested by a party or stipulation.]</del>
<del>15. Disclosure of amended contentions under LPR 1-XX and opinion of counsel defense under LPR 1-XX</del>	<del><b>August __, 20__</b> [30 days after the Claim Construction Order]</del>
<del>16. Expert Designations</del>	<del><b>September __, 20__</b> [60 days after Claim Construction Order issued by court]</del>

<u>17. Rebuttal Expert Designations</u>	<u>October __, 20__ [30 days after Claim Construction Order issued by court]</u>
<u>18. Expert Discovery Cut-off</u>	<u>November __, 20__ [30 days after Rebuttal Expert Designations]</u>
198. Dispositive Motion Deadline	<del>November</del> <u>December</u> __, 20__ [ <del>30</del> 30 days after <u>expert</u> discovery closes]

~~IT IS ORDERED that within 30 days after Initial Disclosures and Responses are complete, the parties must submit to a Pre-Claim Construction Settlement Conference as set by the court.~~

IT IS FURTHER ORDERED that within **30 days** after the court enters a ~~claim~~ Claim Construction order, the parties must submit to a Post-Claim Construction Settlement Conference as set by the court.

IT IS FURTHER ORDERED that any extension of the discovery deadline will not be allowed without a showing of good cause for the extension. All motions or stipulations to extend discovery must be received by the court at least **21 days before the expiration of the subject deadline**. A request made after this date will not be granted unless the movant demonstrates that the failure to act was the result of excusable neglect. The motion or stipulation must include:

- (a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;
- (b) A specific description of the discovery that remains to be completed;
- (c) The reasons why the remaining discovery was not completed within the time limit of the existing discovery deadline; and
- (d) A proposed schedule for the completion of all remaining discovery.

IT IS FURTHER ORDERED that, if no dispositive motions will be filed within the time specified in this order, then the parties must file a written, joint proposed pretrial order within 30 days of the dispositive motion cutoff, on or before **December \_\_, 20\_\_**. If dispositive motions are filed, then the parties must file a written, joint proposed pretrial order within 30 days of the date the court enters a ruling on the dispositive motions. Within 30 days of the entry of a pretrial order, or as further ordered by the court, the parties must submit to a pretrial settlement conference.

IT IS SO ORDERED.

\_\_\_\_\_  
 UNITED STATES MAGISTRATE JUDGE  
 DATED: \_\_\_\_\_.