IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

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| [PLAINTIFF[S]]  v.  [DEFENDANT[S]] | §  §  §  §  §  §  § | CASE NO.  JUDGE MICHAEL TRUNCALE |

**PROPOSED SCHEDULING ORDER**

The following actions shall be completed by the date indicated.[[1]](#footnote-1) All communications concerning the case shall be directed to Karen McClelland, Judicial Assistant for Judge Truncale at (409) 654-6210.

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| **Proposed Deadlines** | **Item** |
| 10 days before Case Management Conference. | Comply with Patent Local Rule (“P.R.”) 3-1 & 3-2 (Infringement Contentions). |
| 1 week after Case Management Conference. | File joint proposed Protective Order.  Deadline to join additional parties. |
| 3 weeks after Case Management Conference. | Complete Initial Mandatory Disclosures other than information directed solely towards damages. |
| 5 weeks after Case Management Conference. | Comply with P.R. 3-3 & 3-4 (Invalidity Contentions). |
| 18 weeks before Claim Construction Hearing. | Comply with P.R. 4-1 (Exchange Proposed Claim Terms). |
| 15 weeks before Claim Construction Hearing. | Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions). |
| 12 weeks before Claim Construction Hearing. | Comply with P.R. 4-3 (Joint Claim Construction Statement). |
| 11 weeks before Claim Construction Hearing. | Amended Pleadings. It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.  **Note:** Responses to Amended Pleadings are due 2 weeks after being served. |
| 8 weeks before Claim Construction Hearing. | Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery). |
| 6 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any).  Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).  Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents). |
| 4 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(b) (Responsive Claim Construction Brief). |
| 3 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(c) (Reply Claim Construction Brief). |
| 2 weeks before Claim Construction Hearing. | Comply with P.R. 4-5(d) (Joint Claim Construction Chart). |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  23 weeks after Case Management Conference (or as soon as practicable). | **Claim Construction Hearing** at 9 a.m., Courtroom #2 Jack Brooks Federal Building, 300 Willow Street, Beaumont, Texas before Judge Michael Truncale. |
| 3 weeks after Claim Construction Hearing. | Comply with P.R. 3-7 (Opinion of Counsel Defenses). |
| 30 days after Claim Construction Ruling. | Comply with P.R. 3-6 (Amended Infringement Contentions). |
| 50 days after Claim Construction Ruling. | Comply with P.R. 3-6 (Amended Invalidity Contentions). |
| 8 weeks after Claim Construction Hearing. | Provide Initial Mandatory Disclosures of Information directed solely to damages. |
| 20 weeks before Jury Selection. | Complete all Factual Discovery and Motions to Compel.  Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof.  **Note:** Objections to any expert, including Daubert motions, shall be filed within three weeks after the expert’s report has been disclosed. Such objections and motions are limited to ten pages. |
| 17 weeks before Jury Selection. | Serve Disclosures for Rebuttal Expert Witnesses.  **Note:** Objections to any expert, including Daubert motions, shall be filed within three weeks after the expert’s report has been disclosed. Such objections and motions are limited to ten pages. |
| 15 weeks before Jury Selection. | Complete all Expert Discovery. |
| 14 weeks before Jury Selection. | File Dispositive Motions.  No dispositive motion may be filed after this date without leave of the Court.  Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.  **Note:** Responses to motions shall be due in accordance with Local Rule CV-7(e). |
| 9 weeks before Jury Selection. | Notice of intention to offer certified records. |
| 8 weeks before Jury Selection. | Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in non-jury cases). |
| 7 weeks before Jury Selection. | File Notice of Request for Daily Transcript or Real Time Reporting.  If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, April Hargett, at april\_hargett@txed.uscourts.gov. |
| 6 weeks before Jury Selection. | For witnesses who are not going to be called live, oral and video deposition designations due. Each party who proposes to offer a deposition by video shall serve on all other parties a disclosure identifying the line and page numbers to be offered. All other parties will have seven calendar days to serve a response with any objections and requesting line and page numbers to be offered. Counsel must consult on any objections, and only those which cannot be resolved shall be presented to the court. The party who filed the initial video deposition designation is responsible for preparation of the final edited video in accordance with all parties’ designations, and the Court’s rulings on objections. (Designations are not to be made for witnesses who will appear live, nor for impeachment on cross-examination.)  Deadline to file Joint Final Pretrial Order. (Obtain form for Exhibit List from the Eastern District’s website.) |
| 5 weeks before Jury Selection. | File Proposed Jury Instructions/Verdict Form (or Proposed Findings of Fact and Conclusions of Law).  Motions in Limine due.  File all other unresolved objections (after meeting and conferring) not specifically provided herein and that relate to the pre-trial order, including: witnesses, deposition extracts, and exhibits. |
| 4 weeks before Jury Selection. | Response to Motions in Limine due.[[2]](#footnote-2)  If a juror questionnaire is to be used, an editable (in Microsoft Word format) questionnaire shall be jointly submitted to the Deputy Clerk in Charge by this date.[[3]](#footnote-3) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  4 weeks before Jury Selection. | Final Pretrial at 9:00 a.m. in Lufkin, Texas. Date parties should be prepared to try case. Provide court with two copies of Exhibit List, using form from District Clerk’s Office. Absent agreement of the parties, this should not have exhibits which were not listed in the Final Pretrial Order. |
| 3 weeks before Jury Selection. | Parties must notify the Court of agreements reached during Meet and Confer. The parties are ordered to meet and confer on any outstanding objections or motions in limine. |
| No later than 1:00 p.m. three (3) business days before the pretrial conference. | The parties shall advise the Court of any subsequent agreements reached on outstanding objections or motions in limine. |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (About 28 weeks after Claim Construction Hearing) | 9:00 a.m. Jury selection and trial in Lufkin, Texas. |

# ADDITIONAL REQUIREMENTS

**Compliance:** Attorneys and pro se litigants who appear in this court must comply with the deadlines set forth in the Federal Rules of Civil Procedure, the Local Rules for the Eastern District of Texas including its Appendices, and this Order. **A party is not excused from the requirements of a Rule or Scheduling Order by virtue of the fact that dispositive motions are pending, the party has not completed its investigation, the party challenges the sufficiency of the opposing party’s disclosure, or because another party has failed to comply with this Order or the rules**.

Failure to comply with relevant provisions of the Local Rules, the Federal Rules of Civil Procedure, or this Order may result in the exclusion of evidence at trial, the imposition of sanctions by the Court, or both. Counsel are reminded of Local Rule AT-3, particularly AT-3(i) & (j).

**Contested Motion Practice:** Counsel and parties shall comply with Local Rules CV-7, 10, 11, and 56, in addition to the Federal Rules of Civil Procedure. Local Rule CV-7 requires you to attach affidavits and other supporting documents to the motion or response when allegations of fact are relied upon and do not appear in the record. Highlight the portions of the affidavits or other supporting documents that are cited in your motion or response.

**Discovery:** The following discovery limits will apply to this case. The Court will consider reasonable requests to increase these limits should circumstances warrant.

1. Interrogatories per Side (“Side” means a party or a group of parties with a common interest): 40.
2. Requests for admissions per Side: 40.
3. Requests for Production per Side: The Court considers that there is no need for them due to the initial mandatory disclosures. If the parties disagree about the required production, they shall meet and confer and follow the process for Discovery Disputes.
4. Hours for Fact Depositions per Side: 70 (for both party and non-party witnesses combined).
5. Hours for Expert Depositions per report: 7.

**Discovery Disputes:** A magistrate judge is available during business hours to immediately hear discovery disputes and to enforce provisions of the rules. The hotline is the best means to obtain an immediate ruling on whether a discovery request is relevant to any claims or defenses and on disputes that arise during depositions. The hotline number is (903) 590-1198. *See* Local Rule CV-26(e).

**Electronic Discovery:** In cases involving disputes over extensive electronic discovery, counsel for both sides shall review the Court’s [Model] Order Regarding E-Discovery in Patent Cases before contacting the Hotline or filing motions to compel or to quash. The order can be modified for use in any case in which electronic discovery is an issue, and any ruling of the Court on conduct of electronic discovery will likely be based, at least in part, on that Model Order. *See* Eastern District of Texas Website under Quick Links / Forms / Patent Forms / Order Regarding E-Discovery in Patent Cases.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the Local Rules’ normal page limits.

**Mediation:** While certain cases may benefit from mediation, mediation may not be appropriate for every case. The Court finds that the Parties are best suited to evaluate whether mediation will benefit the case after the issuance of the Court’s claim construction order. Accordingly, the Court **ORDERS** the Parties to file a Joint Notice indicating whether the case should be referred for mediation **within fourteen days of the issuance of the Court’s claim construction order**. As a part of such Joint Notice, the Parties should indicate whether they have a mutually agreeable mediator for the Court to consider. If the Parties disagree about whether mediation is appropriate, the Parties should set forth a brief statement of their competing positions in the Joint Notice.

**Privileged Information:** There is no duty to disclose privileged documents or information. The parties shall exchange Privilege Logs identifying the documents or information and the basis for any disputed claim or privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.

Any party may move the Court for an order compelling the production of any document or information identified on any party’s Privilege Log. If such a motion is made, the party asserting privilege shall respond to the motion within the time period provided by Local Rule CV-7. The party asserting privilege shall file with its response any proof in the form of declarations or affidavits to support assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection.

**Settlement:** Plaintiff’s counsel shall immediately notify the court upon settlement. All papers necessary for the removal of the case from the Court’s active trial docket should be filed within thirty (30) days of settlement.

**Summary Judgment Motions, Motions to Strike Expert Testimony, and *Daubert* Motions:** For each motion, the moving party shall provide the Court with two (2) hard copies of the completed briefing (opening motion, response, reply, and if applicable, sur-reply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. These copies shall be delivered to the Court within three (3) business days after briefing has completed. For expert-relatedmotions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive to the Court. Complete digital copies of the expert report(s) shall be delivered to the Court no later than the dispositive motion deadline.

1. If a deadline falls on a Saturday, Sunday, or a legal holiday as defined in Federal Rule of Civil Procedure 6, the effective date is the first federal court business day following the deadline imposed. [↑](#footnote-ref-1)
2. To save time and space, respond only to items objected to. All others will be considered to be agreed. Opposing counsel **shall confer** in an attempt to resolve any dispute over the motions in limine within five calendar days of the filing of any response. The parties shall notify the court of all issues which are resolved. [↑](#footnote-ref-2)
3. If the parties are unable to agree on an appropriate questionnaire, the Court will submit its own questionnaire to the jury. [↑](#footnote-ref-3)