

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Plaintiff,

v.

Case No:

Defendant.

_____ /

CASE MANAGEMENT REPORT IN PATENT CASES

The parties have agreed on the following dates and discovery plan under Federal Rules of Civil Procedure 26(f) and Middle District of Florida Local Rule 3.05(c):

DEADLINE OR EVENT [with Court's recommended timeframes]	AGREED DATE
Mandatory Initial Disclosures (per Fed. R. Civ. P. 26(a)(1)) [Court recommends 30 days after CMR meeting]	
Certificate of Interested Persons and Corporate Disclosure Statement [each party who has not previously filed must file immediately]	
Motions to Add Parties or to Amend Pleadings [Court recommends 3 months after CMR meeting]	
Disclosure of Infringement Contentions [1 month after CMR meeting]	
Disclosure of Non-Infringement and Invalidity Contentions [within 1 month of above]	
Initial Identification of Disputed Claim Terms [within 1 month of above]	
Proposed Claim Term Constructions [within 1 month of above]	
Joint Claim Construction Statement [within 2 weeks of above]	

Technology Tutorial Conference [within 2-4 weeks of above]	
Plaintiff's Claim Construction Brief [within 1 month of above]	
Defendant's Response Brief [within 1 month of above]	
Joint Pre-Hearing Statement [within 1 week of above]	
Claim Construction Hearing [within 3 weeks of above]	
Disclosure of Intent to Rely on Advice of Counsel as a Defense; Amendment of Infringement, Non-Infringement and Invalidity Contentions; and Disclosure of Expert Reports on Issues Where the Party Bears the Burden of Proof [no sooner than 3 months and no later than 5 months of above]	
Disclosure of Rebuttal Expert Reports [within 1 month of above]	
Fact Discovery Deadline [within 2 months of Amendments]	
Expert Discovery Deadline [within 1 month of above]	
Dispositive Motions [within 2 months of above and at least 4-5 months prior to trial]	
Parties' Deadline to Meet and Confer <u>In Person</u> to Prepare Joint Final Pretrial Statement [10 days prior to deadline for the final pretrial statement]	
Parties' Deadline for Filing Joint Final Pretrial Statement (Including Voir Dire Questions, a Single Set of Jointly-Proposed Jury Instructions and Verdict Form [also email to chambers_FLMD_chappell@flmd.uscourts.gov], Witness Lists, Exhibit Lists with Objections on Approved Form); Trial Briefs [3 weeks before Final Pretrial Conference]	
Parties' Deadline for Filing All Other Motions Including Motions <i>In Limine</i> [All requests to limit evidence shall be included in a single motion not to exceed 25 pages without leave of Court. Responses are limited to 20 pages without leave of Court. [3 weeks before Final Pretrial Conference]	
Final Pretrial Conference [Court will set a date approximately 3 weeks before trial]	

Trial Term Begins [Local Rule 3.05 sets a goal of trial within 2 years in all Track Two cases; trial term must not be less than 4 months after dispositive motions deadline (unless filing of such is waived). The trial term begins on the first business day of the first full week of each month.]	
Estimated Length of Trial [trial days]	
Jury / Non-Jury	
Mediation Deadline: Mediator: Address: Telephone: [Absent arbitration, mediation is mandatory; either 2-3 months after CMR meeting or just after discovery deadline]	
All Parties Consent to Proceed Before Magistrate Judge	Yes____ No____ Likely to Agree in Future _____

I. Meeting of Parties in Person

Lead counsel must meet **in person** and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held in person on _____ (date) at _____ (time) and was attended by (name and counsel for (if applicable)):

II. Pre-Discovery Initial Disclosures of Core Information; Fed.R.Civ.P. 26(a)(1)(A)-(D) Disclosures

Federal Rule of Civil Procedure 26, as amended effective December 1, 2010, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties ___ have exchanged ___ agree to exchange (check one) information described in Federal Rule of Civil Procedure 26(a)(1)(A)-(D) by _____ (date).

Below is a description of information disclosed or scheduled for disclosure.

III. Electronic Discovery

The parties have discussed issues relating to disclosure or discovery of electronically stored information ("ESI"), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

no party anticipates disclosure or discovery of ESI in this case;

one or more of the parties anticipate disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, the following issues shall be discussed¹:

¹ See *Rules Advisory Committee Notes* to the 2006 Amendments to Rule 26(f) and Rule 16.

A. The form or forms in which ESI should be produced.

B. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.

D. The various sources of ESI within a party's control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

E. The characteristics of the party's information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party's computer systems.

F. Any issues relating to preservation of discoverable ESI.

G. Assertions of privilege or of protection as trial-preparation materials, including whether the parties can facilitate discovery by agreeing on procedures and, if appropriate, an Order under Federal Rules of Evidence Rule 502. If the parties agree that a protective order is needed, they shall attach a copy of the proposed order to the Case Management Report. The parties should attempt to agree on protocols that minimize the risk of waiver. Any protective order shall comply with Local Rule 1.09 and Section IV.F. below on Confidentiality Agreements.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Please state if there are any areas of disagreement on these issues and , if so, summarize the parties' positions on each:

If there are disputed issues specified above, or elsewhere in this report, (check one):

one or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Federal Rule of Civil Procedure 16(a).

all parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

IV. Agreed Discovery Plan for Plaintiffs and Defendants

A. Certificate of Interested Persons and Corporate Disclosure Statement

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons

and Corporate Disclosure Statement. A motion, memorandum, response, or other paper "including emergency motion" is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current: _____ Yes _____ No

Amended Certificate will be filed by _____ (party) on or before _____ date).

B. Discovery Not Filed

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. See Local Rule 3.03 (f). The parties further agree as follows:

C. Limits on Discovery

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A); Local Rule 3.02(b). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours.

Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions
2. Interrogatories
3. Document Requests
4. Requests to Admit
5. Supplementation of Discovery

D. Discovery Deadline

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows:

E. Disclosure of Expert Testimony

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to comply with Federal Rules of Civil Procedure 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of

all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony:

F. Confidentiality Agreements

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. See *Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as "confidential." There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. See Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that "no party shall file a document under seal without first having obtained an

order granting leave to file under seal on a showing of particularized need." With respect to confidentiality agreements, the parties agree as follows:

G. Other Matters Regarding Discovery

VI. Settlement and Alternative Dispute Resolution.

A. Settlement

The parties agree that settlement is _____ likely _____ unlikely (check one).

The parties request a settlement conference before a United States Magistrate Judge:

_____ yes _____ no _____ likely to request in future

B. Arbitration

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

_____ yes _____ no _____ likely to agree in future

_____ Binding _____ Non-Binding

C. Mediation

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties have agreed on a mediator from the Court's approved list of mediators as set forth in the table above, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk and is posted on the Court's web site at <http://www.flmd.uscourts.gov>.

D. Other Alternative Dispute Resolution

The parties intend to pursue the following other methods of alternative dispute resolution:

Date: _____

Signature of Counsel (with information required by Local Rule 1.05(d)) and Signature of Unrepresented Parties:
