United States District Court
DISTRICT OF MINNESOTA

LR 39.1 PREPARATION FOR TRIAL IN CIVIL CASES

(a) Trial Date. Each judge regularly places a group of civil cases on a trial calendar and sets the date that a trial will begin in one of those cases (the "trial date"). At least 21 days before the trial date, the judge must notify the parties of a case's placement on the trial calendar. Cases on the trial calendar may be tried in any order, in front of any judge.

(b) Trial-Related Documents. Unless the court orders otherwise, each party must submit or make available the following documents:

(1) Before any trial.

(A) Initial pretrial documents. At least 14 days before the trial date, each party must file and serve the following documents:

(i) Trial brief.

(ii) Exhibit list. Parties must use an exhibit-list form that is substantially the same as the exhibit-list form available from the clerk. Parties must mark each exhibit with the offering party's role (and, if necessary, the offering party's name), a unique arabic numeral identifying the exhibit, and the case number. For example:

- Pltf. 1, 08-CV-1234
- Deft. 1, 08-CV-1234
- Pltf. Smith 1, 08-CV-1234

(iii) Witness list. A party's witness list must briefly summarize each witness's expected testimony.

(iv) List of deposition testimony. A party must designate the specific parts of a deposition to be offered at trial, except that a party need not designate specific parts of a deposition that may be offered only to impeach testimony given at trial.

(v) Motions in limine.

(B) Exhibits. At least 14 days before the trial date, the parties must make exhibits available to one another for examination and copying.

(C) Deposition objections. At least 7 days before the trial date, a party who objects to deposition testimony designated by another party for introduction at trial must file and serve a list of objections.

(2) Before a jury trial. In a jury trial, each party must also file and serve the following documents at least 14 days before the trial date:

(A) Proposed voir dire questions.

(B) Proposed jury instructions.

(i) In general. Each proposed jury instruction must be numbered, must begin on a separate page, and must identify the supporting legal authority.

(ii) Patent cases. In a case that involves a claim that arises under the patent laws, if a proposed jury instruction is based on model jury instructions that the parties agreed to use under LR 16.6(c), the proposed instruction must show how it differs from the model instruction.

(C) Proposed verdict form.

(3) Before a bench trial. In a bench trial, each party must also file and serve proposed findings of fact and conclusions of law at least 14 days before the trial date.

[Adopted effective February 1, 1991; amended November 1, 1996; amended May 17, 2004, amended February 9, 2006; amended December 1, 2009; amended May 14, 2013]

2013 Advisory Committee's Note to LR 39.1

The language of LR 39.1 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

The provision relating to the submission of exhibit lists, now LR 39.1(b)(1)(A)(ii), has been revised to permit parties to submit their exhibit lists either on a form available from the clerk or on a form substantially the same as the clerk's form.

Former LR 39.1(c), related to sanctions for failure to comply with LR 39.1, was deleted as a needless cross-reference to LR 1.3, which applies of its own force.

2005 Advisory Committee's Note to LR 39.1(b)(2)(B)(ii)

In general. Paragraph (b)(2)(B)(ii) set outs a suggested practice in which the jury instructions of both parties relating to the scope, validity, enforcement, or unenforceability of patents is based on a single, common set of standard jury instructions. The handling of jury instructions has proven to require significant resources from both the parties and the Court. The instructions can be lengthy and detailed. In addition, the traditional process, by which the parties construct their proposed instructions in isolation from each other, presents inherent inefficiencies. It tends to cause the parties to suggest differing instructions even where they do not disagree over substance. In addition, it makes it difficult to identify the substantive points that the parties actually dispute. The problems are especially acute in cases relating to patents.

The suggestion in paragraph (b)(2)(B)(ii) addresses these problems by encouraging the parties to present their proposed suggestions as additions to or deletions from a common set of standard instructions. Under this practice, the instructions proposed by the parties will agree unless at least one party takes the affirmative step of proposing a modification of the standard language. Presumably this will occur only where the party considers the matter to be worth addressing. As a result, aspects of the instructions over which the parties do not disagree, and which the parties consider routine, will be proposed in unmodified form in such a manner as to make the lack of dispute clear. Accordingly, the areas of true disagreement will be plainly visible. In this way, the paragraph should reduce the time and cost, for both the parties and the Court, of attending to jury instructions.

Various other districts have promulgated local rules that require or encourage the parties' proposed instructions to be related to a common set of standard instructions. The suggestion in paragraph (b)(2)(B)(ii) is similar to the more lenient of these rules.

Two-stage procedure; default standard instructions. Paragraph (b)(2)(B)(ii) operates in connection with paragraph (c) of Local Rule 16.6. Under the two paragraphs, the parties are to consult regarding the selection of a particular set of pattern jury instructions as part of the final pretrial conference. The Rule contemplates that the parties will, in most cases, be able to agree on a particular set of pattern jury instructions. In the event that they are unable to agree, however, the parties should expect that the Court may, on its own initiative, impose a set of common instructions on them.

Scope of requirement; included cases vs. included instructions. The suggestion in paragraph (b)(2)(B)(ii), and the related requirement to confer under paragraph (c) of Local Rule 16.6, are intended to apply to cases relatively broadly. Cases that are included under the Rule are any that involve a claim or defense relating to patents. This includes, but is not limited to, cases that include claims for patent infringement and/or declarations for patent non-infringement or invalidity. It also includes cases in which the claims may not "arise under" the law of patents strictly, but in which the claim or defense draws upon or involves a patent more tangentially. Examples of this latter type of case include, for example, claims for breach of contract, where the contract terms at issue refer to patents or patentable subject matter, or claims for violation of antitrust law where the accused conduct involves the use of a patent or patent rights.

At the same time, the suggestion in paragraph (b)(2)(B)(ii) actually to submit instructions in terms of additions and/or deletions from a standard text is narrower. It applies only to those instructions, in an included case, that relate to the scope, validity, enforcement, or unenforceability of a patent. This is less than all the issues that may exist in an included case, and it is contemplated that, under the usual circumstances, only some of the instructions in an included case will be of the type that the Rule suggests be presented as additions and/or deletions. Instructions not included in the suggestion can be presented in any acceptable manner.

Freedom to propose particular instructions; consistency with Fed. R. Civ. P. 51. Under the practice suggested in paragraph (b)(2)(B)(ii), all parties retain the freedom to propose whatever instructions they choose. The practice does not restrict the substance of what the parties must propose; rather, it addresses only the form. The paragraph contemplates that parties who disagree with a particular standard instruction have the freedom to alter it if necessary to lay out the text of the instruction that they wish to propose. In this way, paragraph (b)(2)(B)(ii) is fully consistent with the parties' general freedom to present jury instructions, as set out for example in Fed. R. Civ. P. 51.