Proposed LR Amendments Posted for Public Comment

- **LR 7.2, Procedures in Social Security Cases and new Social Security Case Assignment Form**
  - Redline: pages 1-4
  - Final: pages 5-8
  - Social Security Case Assignment Form: pages 9-10

- **Local Rule 37.1, Form of Discovery Motions**
  - Redline : pages 11-12
  - Final: pages 13-14

- **LR Form 3 and Form 4, Rule 26(f) Report and Proposed Scheduling Order**
  - Form 3 Redline: pages 15-19
  - Form 3 Final: pages 20-24
  - Form 4 Redline: pages 25-34
  - Form 4 Final: pages 35-44

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LR 7.2 Proposed Amendments – Redline

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Case Assignment.

~~*(1) Consent to disposition by magistrate judge.*~~

~~(2)~~(1) The clerk must randomly assign ~~all cases~~every case filed under 42 U.S.C. ~~§~~§ 405(g) to a magistrate judge~~ to conduct the proceedings and dispose of the case.~~ .

~~(A) A party consents to disposition by the magistrate judge unless that party files notice under LR 7.2(a)(2)(A).~~

~~*(3) Withdrawing consent to disposition by magistrate judge.*~~

~~(4)~~(2) ~~To withdraw consent to disposition by the magistrate judge, a party must file a notice to withdraw consent on~~ On or before the date ~~that~~ on which the answer must be filed~~.~~, each party must submit a completed Social Security Case Assignment Form, through which the party either:

(A) ~~If~~consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

(B) asks to have a ~~timely notice withdrawing consent is~~district judge assigned to the case.

(3) The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the ECF system.

~~(5)~~(4) If any party asks to have a district judge assigned to the case, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

(b) Filing an Answer.

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

(c) Motions; Time Limits.

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

(d) Review After Remand When Courts Retain Jurisdiction.

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(e) Attorney's Fees Under the Social Security Act. Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011; amended September 12, 2014; amended ____, 2015]

2015 Advisory Committee's Note to LR 7.2

LR 7.2(a) has been amended to require that a party's consent to the disposition of a case by a magistrate judge be explicit. Under former LR 7.2(a)(1)(B), a party was deemed to implicitly consent to disposition by a magistrate judge if that party did not notify the Court otherwise. Although it is clear that a party can implicitly consent to the disposition of a case by a magistrate judge (*see Roell v. Withrow*, 538 U.S. 580 (2003)), LR 7.2(a)(1)(B) was nevertheless in some tension with 28 U.S.C. § 636(c)(2), which seems to envision that any such consent will be explicit. To remove that tension, LR 7.2(a) has been amended to require each party to submit a Social Security Case Assignment Form, through which the party will inform the Court whether he or she consents to disposition of the case by the magistrate judge. The form is available on the Court's website.

Each party must submit a completed copy of the Social Security Case Assignment Form on or before the date on which the answer is due. The form must not be filed on the ECF system; instead, a paper copy must be submitted to the clerk. This procedure helps "to protect the voluntariness of the parties' consent." 28 U.S.C. § 636(c)(2).

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The rule was amended to require that social security appeals be initially assigned to only a magistrate judge. The court will presume that the parties consent to disposition by a magistrate judge unless a party notifies the court to the contrary on or before the date that the answer is due. If a party does notify the court to the contrary, a district judge will also be assigned to the case, the magistrate judge will issue a report and recommendation (R&R), and either or both parties may seek de novo review of the R&R from the district judge. Thus, these amendments do not in any way affect the substantive rights of parties to social security appeals.

2011 Advisory Committee's Note to LR 7.2

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 72.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney's fees under certain laws may be filed are deleted as redundant.

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The rule was amended by replacing all references to "Secretary of Health and Human Services" to "Commissioner of Social Security" as referenced in the statute upon which the local rule is based.

1996 Advisory Committee's Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to "Magistrate Judge" rather than "Magistrate."

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney's fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney's fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), "enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." If the Court remands the cause for a rehearing under this sentence, it is referred to as a "sentence four" remand.

The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge's order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Case Assignment.

(1) The clerk must randomly assign every case filed under 42 U.S.C. § 405(g) to a magistrate judge.

(2) On or before the date on which the answer must be filed, each party must submit a completed Social Security Case Assignment Form, through which the party either:

(A) consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

(B) asks to have a district judge assigned to the case.

(3) The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the ECF system.

(4) If any party asks to have a district judge assigned to the case, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

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(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

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(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

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(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

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The Court may, under the sixth sentence of § 405(g), "on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." These remands are called "sentence six" remands.

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review the proceedings on remand. In Shalala v. Schaefer, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney's fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant's favor. The time within which to petition for attorney's fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

[Name of Plaintiff(s)]

Plaintiff(s)

v. Case No.: *[Case Number with initials]*

[Name of Defendant(s)]

Defendant(s)

Social Security Case Assignment Form
(Consent to Magistrate Judge or Request for District Judge Assignment)

A United States magistrate judge is available to conduct all proceedings in this action under 42 U.S.C. § 405(g) for review of a decision of the Commissioner of Social Security and to order the entry of a final judgment. The judgment may then be appealed directly to the United States Court of Appeals for the Eighth Circuit, like any other judgment of this Court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case disposed of by a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Please indicate whether you consent to the disposition of your case by a magistrate judge by checking one of these boxes:

☐ I consent to have a United States magistrate judge conduct all proceedings in this case, including the entry of final judgment.

☐ I do not consent to have a United States magistrate judge conduct all proceedings in this case, and ask that a United States district judge be assigned to the case.

Dated: _____, 20__

_____
Signature of attorney or unrepresented party

_____
Printed name of party

DO NOT FILE THIS FORM ON THE ECF SYSTEM. Please submit a completed paper copy of this form to the following address:

United States District Court for the District of Minnesota
Clerk's Office
300 South Fourth Street, Suite 202
Minneapolis, MN 55415

LR 37.1 FORM OF DISCOVERY MOTIONS

~~(a)~~

A motion ~~presenting a discovery dispute~~under Federal Rule of Civil Procedure 36(a)(6) or 37 must ~~include,~~ contain, either in the motion itself or in ~~an attached~~the accompanying memorandum~~:~~—

~~(1)~~ (a) any certification required by a federal or local rule that the movant has in good faith conferred or attempted to confer with the party failing to act;

(b) a specification of the disclosure or discovery in dispute; ~~and~~

~~(2) either a verbatim recitation of each~~ (c) the text (which may appear in an exhibit to which the motion or memorandum refers) of any interrogatory, request, question, or notice in dispute, together with each answer, response, or objection ~~that is the subject of the motion, or a copy of the actual discovery document that is the subject of the motion.~~ to any such interrogatory, request, question, or notice;

~~(b) If the discovery dispute involves interrogatories, document requests, or requests for admission, the moving party's memorandum must set forth only:~~

~~(1) the particular interrogatories, document requests, or requests for admission that are the subject of the motion;~~

~~(2) the response or objection in dispute; and~~

~~(3)~~ (d) a concise statement of why the disclosure, answer, response, production, or objection is insufficient, evasive, incomplete, or otherwise improper~~.~~;

(e) if the motion concerns a failure to preserve electronically stored information, a showing that the information—

(1) should have been preserved in the anticipation or conduct of litigation,

(2) was lost because a party failed to take reasonable steps to preserve it, and

(3) cannot be restored or replaced through additional discovery; and

(f) the remedy sought, together with an argument for why the requested remedy is authorized and justified.

[Adopted effective February 1, 1991 as LR 37.2; amended and renumbered as LR 37.1 on July 23, 2012; amended ____, 2015]

[Former LR 37.1 adopted effective November 1, 1996; amended September 24, 2009; abrogated July 23, 2012]

2015 Advisory Committee's Note to LR 37.1

Local Rule 37.1 has been amended to incorporate the amendments made to Fed. R. Civ. P. 37, particularly the changes in Fed. R. Civ. P. 37(e) regarding failure to preserve electronically stored information. The rule has also been reorganized to make the rule easier to read and understand.

2012 Advisory Committee's Note to LR 37.1

The language of new LR 37.1 (former LR 37.2) has been amended in accordance with the restyling process described in the 2012 Advisory Committee's Preface on Stylistic Amendments.

In 2012, LR 7.1 was amended to require parties to meet and confer before filing any motion, and to file a meet-and-confer statement with the motion. This change, along with other changes to LR 16.2 through 26.1, rendered former Rule 37.1 superfluous. Accordingly, former LR 37.1 was abrogated, and former LR 37.2 was renumbered as LR 37.1.

1996 Advisory Committee's Note to LR 37.1

The language of LR 37.1 supplements provisions of the National Rules that require certification of good faith efforts to resolve discovery disputes. See, e.g., Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 37(a)(2)(A), 37(a)(2)(B), 37(a)(4)(A), and 37(d).

LR 37.1 Form of Discovery Motions

A motion under Federal Rule of Civil Procedure 36(a)(6) or 37 must contain, either in the motion itself or in the accompanying memorandum—

(a) any certification required by a federal or local rule that the movant has in good faith conferred or attempted to confer with the party failing to act;

(b) a specification of the disclosure or discovery in dispute;

(c) the text (which may appear in an exhibit to which the motion or memorandum refers) of any interrogatory, request, question, or notice in dispute, together with each answer, response, or objection to any such interrogatory, request, question, or notice;

(d) a concise statement of why the disclosure, answer, response, production, or objection is insufficient, evasive, incomplete, or otherwise improper;

(e) if the motion concerns a failure to preserve electronically stored information, a showing that the information—

(1) should have been preserved in the anticipation or conduct of litigation,

(2) was lost because a party failed to take reasonable steps to preserve it, and

(3) cannot be restored or replaced through additional discovery; and

(f) the remedy sought, together with an argument for why the requested remedy is authorized and justified.

[Adopted effective February 1, 1991 as LR 37.2; amended and renumbered as LR 37.1 on July 23, 2012; amended ____, 2015]

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Proposed Amendments - Redline

FORM 3 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

CIVIL FILE NO. _____

Plaintiff,

RULE 26(f) REPORT

v.

Name of Defendant,

Defendant.

_____

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room ____, of the U.S. Courthouse in, _____, Minnesota. The parties [request/do not request] that the pretrial be held by telephone.

(a) Description of the Case.

(1) Concise factual summary of plaintiff's claims:

(2) Concise factual summary of defendant's claims/defenses:

(3) Statement of jurisdiction (including statutory citations):

(4) Summary of factual stipulations or agreements:

(5) Statement of whether a jury trial has been timely demanded by any party:

(6) Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before_____.

(2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by _____.

(3) The parties must commence fact discovery procedures in time to be completed by _____.

(4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions;

(E) _____ Rule 35 medical examinations; and

(F) _____ other.

(d) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____ (number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____,

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Initial experts.

(i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before _____.

(ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(B) Rebuttal experts.

(i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before _____.

(ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(3) All expert discovery must be completed by _____.

(e) Other Discovery Issues.

(1) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 6 as a template for a proposed protective order.)

(2) Discovery of Electronically Stored Information. The parties have discussed ~~issues about~~ disclosure ~~or~~, discovery, and preservation of electronically stored information ~~as required by Fed. R. Civ. P. 26(f),~~ including the form ~~or forms~~ in which it should be produced ~~and inform the Court of~~. The parties have reached the following agreements ~~or~~and identified the following issues:

(3) Claims of Privilege or Protection. The parties have discussed issues ~~about claims~~ regarding the protection of information by a privilege or ~~of protection as trial-preparation materials~~the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production ~~and~~or have any other agreements under Fed. R. Evidence 502. The parties request the Court to include the following agreement in the scheduling order:

(4) The parties:

☐ agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

☐ agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

☐ do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

(f) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by _____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(g) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after _____.

(2) The parties propose that the final pretrial conference be held on or before _____.

(h) Insurance Carriers/Indemnitors.

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

(i) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to the plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(j) Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

DATE: _____ _____

Plaintiff's Counsel
License #
Address
Phone #

DATE: _____ _____

Defendant's Counsel
License #
Address
Phone #

FORM 3 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

CIVIL FILE NO. _____

Plaintiff,

RULE 26(f) REPORT

v.

Name of Defendant,

Defendant.

_____

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room ____, of the U.S. Courthouse in, _____, Minnesota. The parties [request/do not request] that the pretrial be held by telephone.

(a) Description of the Case.

(1) Concise factual summary of plaintiff's claims:

(2) Concise factual summary of defendant's claims/defenses:

(3) Statement of jurisdiction (including statutory citations):

(4) Summary of factual stipulations or agreements:

(5) Statement of whether a jury trial has been timely demanded by any party:

(6) Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before_____.

(2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by _____.

(3) The parties must commence fact discovery procedures in time to be completed by _____.

(4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions;

(E) _____ Rule 35 medical examinations; and

(F) _____ other.

(d) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____ (number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____,

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Initial experts.

(i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before _____.

(ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(B) Rebuttal experts.

(i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before _____.

(ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before _____.

(3) All expert discovery must be completed by _____.

(e) Other Discovery Issues.

(1) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 6 as a template for a proposed protective order.)

(2) Discovery of Electronically Stored Information. The parties have discussed disclosure, discovery, and preservation of electronically stored information, including the form in which it should be produced. The parties have reached the following agreements and identified the following issues:

(3) Claims of Privilege or Protection. The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502. The parties request the Court to include the following agreement in the scheduling order:

(4) The parties:

□ agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

□ agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

□ do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

(f) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by _____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(g) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after _____.

(2) The parties propose that the final pretrial conference be held on or before _____.

(h) Insurance Carriers/Indemnitors.

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.

(i) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to the plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(j) Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

DATE: _____ _____
Plaintiff's Counsel
License #
Address
Phone #

DATE: _____ _____
Defendant's Counsel

License #
Address
Phone #

Proposed Amendments - Redline

FORM 4 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER (PATENT CASES)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

Plaintiff,

CIVIL FILE NO. _____

v.

RULE 26(f) REPORT
(PATENT CASES)

Name of Defendant,

Defendant.

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room _____, of the U.S. Courthouse in _____, Minnesota. The parties [request/do not request] that the initial pretrial conference be held by telephone.

(a) Description of the Case.

(1) Concise factual summary of plaintiff's claims, including the patent number(s), date(s) of patent(s), and patentee(s):

(2) Concise factual summary of defendant's claims/defenses:

(3) Statement of jurisdiction (including statutory citations):

(4) Summary of factual stipulations or agreements:

(5) Statement of whether a jury trial has been timely demanded by any party:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Discovery and Pleading of Additional Claims and Defenses.

(1) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

(2) Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support must be explained in the motion seeking leave. Leave must be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

(d) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before _____.

(2)The parties must commence fact discovery procedures in time to be completed by _____.

(3) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions; and

(E) _____ other.

(e) Discovery Relating to Claim Construction Hearing.

(1) Plaintiff’s Claim Chart.

(A) Plaintiff’s claim chart must be served on or before _____.

(B) Plaintiff's claim chart must provide a complete and detailed explanation of:

(i) which claim(s) of its patent(s) it alleges are being infringed;

(ii) which specific products or methods of defendant's it alleges literally infringe each claim;

(iii) where each element of each claim listed in paragraph (e)(1)(B)(i) is found in each product or method listed in paragraph (e)(1)(B)(ii), including the basis for each contention that the element is present; and

(iv) if there is a contention by plaintiff that there is infringement of any claims under the doctrine of equivalents, plaintiff must separately indicate this on its claim chart and, in addition to the information required for literal infringement, plaintiff must also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

Plaintiff may amend its claim chart only by leave of the Court for good cause shown.

(2) Defendant's Claim Chart.

(A) Defendant's claim chart must be served on or before _____.

(B) Defendant's claim chart must indicate with specificity which elements on plaintiff's claim chart it admits are present in its accused device or process, and which it contends are absent, including in detail the basis for its contention that the element is absent. And, as to the doctrine of equivalents, Defendant must indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

Defendant may amend its claim chart only by leave of Court for good cause shown.

(3) Exchange of Claim Terms and Proposed Constructions.

(A) On or before _____, the parties must simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.

(B) Following the exchange of the list of claim terms, phrases, or clauses, but before _____, the parties must meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement, and determining whether to request a pre-claim construction conference.

(C) During the meet and confer process, the parties must exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes and will make this exchange on or before _____.

(D) When exchanging their preliminary claim constructions, the parties must provide a preliminary identification of extrinsic evidence, including without limitation: dictionary definitions, citations to learned treatises and prior art, and

testimony of percipient or expert witnesses that they contend support their respective claim constructions.

(i) The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced.

(ii) With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness' proposed testimony.

(4) Joint Patent Case Status Report.

Following the meet and confer process outlined in paragraph (e)(3)(B)-(D), above, but no later than _____, the parties must file a joint patent case status report. The joint patent case status report must address the following:

(A) whether the parties request a claim construction hearing to determine claim interpretation. If the parties disagree about whether a claim construction hearing should be held, the parties must state their respective positions and reasoning; and

(B) whether the parties request a pre-claim construction conference with the Court and if so, whether they request that the pre-claim construction conference occur before or after the joint claim construction statement is filed.

(i) If the parties request that the pre-claim construction conference occur before the joint claim construction statement is filed, the parties must state why an early conference is necessary.

(ii) If the parties disagree about whether a pre-claim construction conference should be held, the parties must provide their respective positions and reasoning.

(iii) If the parties request a pre-claim construction conference, the parties must submit a summary of the claim construction issues the parties wish to discuss at the conference.

(5) Joint Claim Construction Statement.

(A) Filing the joint claim construction statement.

(i) The joint claim construction statement must be filed with the joint patent case status report, unless the joint patent case status report requests that the pre-claim construction conference occur before the joint claim construction statement is filed.

(ii) If the Court does not respond to the request to schedule a pre-claim construction conference within 30 days after the joint patent case status report is filed, the parties must file a joint claim construction statement.

(B) Content of the joint claim construction statement. The joint claim construction statement must contain the following information:

(i) the construction of the claim terms, phrases, or clauses on which the parties agree;

(ii) each party's proposed construction of each disputed claim term, phrase, or clause together with an identification of all references from the specification of prosecution history to support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction;

(iii) whether any party proposes to call one or more witnesses, including any experts, at the claim construction hearing; the identity of each witness; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

(iv) whether the parties believe that a technology tutorial would be helpful for the Court and, if so, the proposed timing and format of the tutorial.

(6) Claim Construction Hearing Order. If the Court schedules a claim construction hearing, the Court must issue an order before the hearing, addressing:

(A) the date and time for the claim construction hearing;

(B) whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

(C) whether the extrinsic evidence in the form of testimony must be the affidavits already filed or in the form of live testimony from the affiants; and

(D) a briefing schedule.

(f) Discovery Relating to Validity/Prior Art .

(1) Defendant’s Prior Art Statement.

(A) Within _____ days of receiving plaintiff's claim chart exchanged under paragraph (e)(1),defendant must serve a prior art statement, listing all of the prior art on which it relies and a complete and detailed explanation of its allegations with respect to:

(i) which claim(s) alleged to be infringed are invalid;

(ii) which specific prior art, if any, invalidates each claim;

(iii) where in such prior art each element of the allegedly invalid claims may be found; and

(iv) whether a basis for invalidity other than prior art is alleged, specifying what the basis is and whether such allegation is based upon 35 U.S.C. §§ 101, 102, 103, and 112, or another statutory provision.

(B) Defendant may amend its prior art statement only by leave of the Court for good cause shown.

(2) Plaintiff's Prior Art Statement.

(A) Within _____ days of its receipt of defendant's prior art statement, plaintiff must serve a prior art statement, responding specifically to each allegation of invalidity set out in defendant's prior art statement, including its position on why the prior art or other statutory reference does not invalidate the asserted patent claims.

(B) Plaintiff may amend its prior art statement only by leave of the Court for good cause shown.

(3) Form of Prior Art Statements. A prior art statement may be submitted in the form of expert reports. If a prior art statement is submitted in the form of expert reports, the deadlines in paragraph (f) govern and are not extended by any different expert discovery deadlines.

(g) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____(number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Identification of experts.

(i) Each party must identify to the opposing party the experts who will provide a report concerning the issues on which that party has the burden of persuasion no later than 15 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must identify experts who will provide a report concerning the issues on which that party has the burden of persuasion by the close of fact discovery; or

(iii) Alternate recommended date: _____.

(B) Initial expert reports. Initial expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B) and address the issues on which that party has the burden of persuasion.

(i) The parties must exchange their initial expert reports no later than 30 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must exchange their initial expert reports no later than 30 days after the close of fact discovery; or

(iii) Alternate recommended date: _____.

(C) Rebuttal expert reports. Rebuttal expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B).

(i) Rebuttal expert reports must be exchanged no later than within 30 days after the initial expert reports are exchanged; or

(ii) Alternate recommended date: _____.

(D) All expert discovery must be completed by _____.

(h) Other Discovery Issues.

(1) Decision on Waiver and Discovery of Privileged Documents. Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until _____, provided that all relevant privileged documents are produced no later than _____. All additional discovery regarding the waiver will take place after _____ and must be completed by _____.

(2) Proposal to Conduct Discovery in Phases. The parties have met and discussed whether any discovery should be conducted in phases to reduce expenses or make discovery more effective and present the following joint/ individual proposals:

(3) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 5 as a template for a proposed protective order.)

(4) Discovery of Electronically Stored Information. The parties have discussed ~~issues about~~ disclosure ~~or~~, discovery, and preservation of electronically stored information ~~as required by Fed. R. Civ. P. 26(f),~~ including the form ~~or forms~~ in which it should be produced~~, and inform the Court of~~. The parties have reached the following agreements ~~or~~and identified the following issues:

(5) Claims of Privilege or Protection. The parties have discussed issues ~~about claims~~ regarding the protection of information by a privilege or ~~of protection as trial-preparation materials~~the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production ~~and~~or have any other agreements under Fed. R. Evidence 502. The parties request the Court to include the following agreement in the scheduling order:

(6) The parties:

☐ agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

☐ agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

☐ do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

(i) Discovery Definitions.

In responding to discovery requests, each party must construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term of art in its response, and limiting its response to that definition.

(j) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by_____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(k) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after_____.

(2) The parties propose that the final pretrial conference be held on or before_____.

(l) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(m)Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

(n) Patent Procedure Tutorial.

The parties [agree/do not agree] the video “An Introduction to the Patent System,” distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.

DATE: _____ _____
Plaintiff’s Counsel
License #
Address
Phone #

DATE: _____ _____
Defendant’s Counsel

License #
Address
Phone #

FORM 4 RULE 26(f) REPORT AND PROPOSED SCHEDULING ORDER (PATENT CASES)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Name of Plaintiff,

Plaintiff,

CIVIL FILE NO. _____

v.

RULE 26(f) REPORT
(PATENT CASES)

Name of Defendant,

Defendant.

The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on _____, and prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for _____, 20____, before the United States Magistrate Judge _____ in Room _____, of the U.S. Courthouse in _____, Minnesota. The parties [request/do not request] that the initial pretrial conference be held by telephone.

(a) Description of the Case.

(1) Concise factual summary of plaintiff's claims, including the patent number(s), date(s) of patent(s), and patentee(s):

(2) Concise factual summary of defendant's claims/defenses:

(3) Statement of jurisdiction (including statutory citations):

(4) Summary of factual stipulations or agreements:

(5) Statement of whether a jury trial has been timely demanded by any party:

(b) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

(c) Discovery and Pleading of Additional Claims and Defenses.

(1) Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

(2) Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support must be explained in the motion seeking leave. Leave must be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

(d) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before _____.

(2)The parties must commence fact discovery procedures in time to be completed by _____.

(3) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) _____ interrogatories;

(B) _____ document requests;

(C) _____ factual depositions;

(D) _____ requests for admissions; and

(E) _____ other.

(e) Discovery Relating to Claim Construction Hearing.

(1) Plaintiff’s Claim Chart.

(A) Plaintiff’s claim chart must be served on or before _____.

(B) Plaintiff's claim chart must provide a complete and detailed explanation of:

(i) which claim(s) of its patent(s) it alleges are being infringed;

(ii) which specific products or methods of defendant's it alleges literally infringe each claim;

(iii) where each element of each claim listed in paragraph (e)(1)(B)(i) is found in each product or method listed in paragraph (e)(1)(B)(ii), including the basis for each contention that the element is present; and

(iv) if there is a contention by plaintiff that there is infringement of any claims under the doctrine of equivalents, plaintiff must separately indicate this on its claim chart and, in addition to the information required for literal infringement, plaintiff must also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

Plaintiff may amend its claim chart only by leave of the Court for good cause shown.

(2) Defendant's Claim Chart.

(A) Defendant's claim chart must be served on or before _____.

(B) Defendant's claim chart must indicate with specificity which elements on plaintiff's claim chart it admits are present in its accused device or process, and which it contends are absent, including in detail the basis for its contention that the element is absent. And, as to the doctrine of equivalents, Defendant must indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

Defendant may amend its claim chart only by leave of Court for good cause shown.

(3) Exchange of Claim Terms and Proposed Constructions.

(A) On or before _____, the parties must simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.

(B) Following the exchange of the list of claim terms, phrases, or clauses, but before _____, the parties must meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement, and determining whether to request a pre-claim construction conference.

(C) During the meet and confer process, the parties must exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes and will make this exchange on or before _____.

(D) When exchanging their preliminary claim constructions, the parties must provide a preliminary identification of extrinsic evidence, including without limitation: dictionary definitions, citations to learned treatises and prior art, and

testimony of percipient or expert witnesses that they contend support their respective claim constructions.

(i) The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced.

(ii) With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness' proposed testimony.

(4) Joint Patent Case Status Report.

Following the meet and confer process outlined in paragraph (e)(3)(B)-(D), above, but no later than _____, the parties must file a joint patent case status report. The joint patent case status report must address the following:

(A) whether the parties request a claim construction hearing to determine claim interpretation. If the parties disagree about whether a claim construction hearing should be held, the parties must state their respective positions and reasoning; and

(B) whether the parties request a pre-claim construction conference with the Court and if so, whether they request that the pre-claim construction conference occur before or after the joint claim construction statement is filed.

(i) If the parties request that the pre-claim construction conference occur before the joint claim construction statement is filed, the parties must state why an early conference is necessary.

(ii) If the parties disagree about whether a pre-claim construction conference should be held, the parties must provide their respective positions and reasoning.

(iii) If the parties request a pre-claim construction conference, the parties must submit a summary of the claim construction issues the parties wish to discuss at the conference.

(5) Joint Claim Construction Statement.

(A) Filing the joint claim construction statement.

(i) The joint claim construction statement must be filed with the joint patent case status report, unless the joint patent case status report requests that the pre-claim construction conference occur before the joint claim construction statement is filed.

(ii) If the Court does not respond to the request to schedule a pre-claim construction conference within 30 days after the joint patent case status report is filed, the parties must file a joint claim construction statement.

(B) Content of the joint claim construction statement. The joint claim construction statement must contain the following information:

(i) the construction of the claim terms, phrases, or clauses on which the parties agree;

(ii) each party's proposed construction of each disputed claim term, phrase, or clause together with an identification of all references from the specification of prosecution history to support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction;

(iii) whether any party proposes to call one or more witnesses, including any experts, at the claim construction hearing; the identity of each witness; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

(iv) whether the parties believe that a technology tutorial would be helpful for the Court and, if so, the proposed timing and format of the tutorial.

(6) Claim Construction Hearing Order. If the Court schedules a claim construction hearing, the Court must issue an order before the hearing, addressing:

(A) the date and time for the claim construction hearing;

(B) whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

(C) whether the extrinsic evidence in the form of testimony must be the affidavits already filed or in the form of live testimony from the affiants; and

(D) a briefing schedule.

(f) Discovery Relating to Validity/Prior Art .

(1) Defendant’s Prior Art Statement.

(A) Within _____ days of receiving plaintiff's claim chart exchanged under paragraph (e)(1),defendant must serve a prior art statement, listing all of the prior art on which it relies and a complete and detailed explanation of its allegations with respect to:

(i) which claim(s) alleged to be infringed are invalid;

(ii) which specific prior art, if any, invalidates each claim;

(iii) where in such prior art each element of the allegedly invalid claims may be found; and

(iv) whether a basis for invalidity other than prior art is alleged, specifying what the basis is and whether such allegation is based upon 35 U.S.C. §§ 101, 102, 103, and 112, or another statutory provision.

(B) Defendant may amend its prior art statement only by leave of the Court for good cause shown.

(2) Plaintiff's Prior Art Statement.

(A) Within _____ days of its receipt of defendant's prior art statement, plaintiff must serve a prior art statement, responding specifically to each allegation of invalidity set out in defendant's prior art statement, including its position on why the prior art or other statutory reference does not invalidate the asserted patent claims.

(B) Plaintiff may amend its prior art statement only by leave of the Court for good cause shown.

(3) Form of Prior Art Statements. A prior art statement may be submitted in the form of expert reports. If a prior art statement is submitted in the form of expert reports, the deadlines in paragraph (f) govern and are not extended by any different expert discovery deadlines.

(g) Expert Discovery.

(1) The parties anticipate that they [will/will not] require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _____(number) experts in the fields of: _____.

(B) The defendant anticipates calling _____ (number) experts in the fields of: _____.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) Identification of experts.

(i) Each party must identify to the opposing party the experts who will provide a report concerning the issues on which that party has the burden of persuasion no later than 15 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must identify experts who will provide a report concerning the issues on which that party has the burden of persuasion by the close of fact discovery; or

(iii) Alternate recommended date: _____.

(B) Initial expert reports. Initial expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B) and address the issues on which that party has the burden of persuasion.

(i) The parties must exchange their initial expert reports no later than 30 days after the Court issues the claim construction order;

(ii) If the Court states that it will not issue a claim construction order, the parties must exchange their initial expert reports no later than 30 days after the close of fact discovery; or

(iii) Alternate recommended date: _____.

(C) Rebuttal expert reports. Rebuttal expert reports must be prepared in accordance with Fed. R. Civ. P. 26(a)(2)(B).

(i) Rebuttal expert reports must be exchanged no later than within 30 days after the initial expert reports are exchanged; or

(ii) Alternate recommended date: _____.

(D) All expert discovery must be completed by _____.

(h) Other Discovery Issues.

(1) Decision on Waiver and Discovery of Privileged Documents. Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until _____, provided that all relevant privileged documents are produced no later than _____. All additional discovery regarding the waiver will take place after _____ and must be completed by _____.

(2) Proposal to Conduct Discovery in Phases. The parties have met and discussed whether any discovery should be conducted in phases to reduce expenses or make discovery more effective and present the following joint/ individual proposals:

(3) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a [proposed protective order/report identifying areas of disagreement].

(The parties are encouraged, though not required, to use Form 5 as a template for a proposed protective order.)

(4) Discovery of Electronically Stored Information. The parties have discussed disclosure, discovery, and preservation of electronically stored information, including the form in which it should be produced. The parties have reached the following agreements and identified the following issues:

(5) Claims of Privilege or Protection. The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502. The parties request the Court to include the following agreement in the scheduling order:

(6) The parties:

□ agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

□ agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

□ do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

(i) Discovery Definitions.

In responding to discovery requests, each party must construe broadly terms of art used in the patent field (e.g., "prior art", "best mode", "on sale"), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term of art in its response, and limiting its response to that definition.

(j) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by_____.

(2) Motions seeking to amend the pleadings must be filed and served by _____.

(3) All other non-dispositive motions must be filed and served by _____.

(4) All dispositive motions must be filed and served by _____.

(k) Trial-Ready Date.

(1) The parties agree that the case will be ready for trial on or after_____.

(2) The parties propose that the final pretrial conference be held on or before_____.

(l) Settlement.

(1) The parties will discuss settlement before the initial pretrial conference, by the plaintiff making a written demand for settlement and each defendant making a written response/offer to plaintiff's demand.

(2) The parties propose that a settlement conference be scheduled to take place before _____.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following:

(m)Trial by Magistrate Judge.

The parties [have/have not] agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c). (If the parties agree to consent, file the consent with the Rule 26(f) Report.)

(n) Patent Procedure Tutorial.

The parties [agree/do not agree] the video “An Introduction to the Patent System,” distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.

DATE: _____ _____
Plaintiff’s Counsel
License #
Address
Phone #

DATE: _____ _____
Defendant’s Counsel
License #
Address

Phone #