

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,  
et al.,

Plaintiffs,

-vs.-

MARK P. BECKER, in his official  
capacity as Georgia State University  
President, et al.,

Defendants.

Civil Action File  
No.1:08-CV-1425-ODE

**JOINT SUBMISSION OF PROPOSED SCHEDULING ORDERS  
REGARDING EXPERT DISCOVERY**

Plaintiffs Cambridge University Press, Oxford University Press, Inc., and Sage Publications, Inc. (collectively “Plaintiffs”) and Defendants Mark P. Becker, Ron Henry, Nancy Seamans, J.L. Albert, Kenneth R. Bernard, Jr., James A. Bishop, Hugh A. Carter, Jr., William H. Cleveland, Robert F. Hatcher, Felton Jenkins, W. Mansfield Jennings, Jr., James R. Jolly, Donald M. Leebern, Jr., Elridge McMillan, William NeSmith, Jr., Doreen Stiles Poitevint, Willis J. Potts, Jr., Wanda Yancey Rodwell, Kessel Stelling, Jr., Benjamin J. Tarbuton, III, Richard L. Tucker, and Allan Vigil in their official capacities only (collectively “Defendants”), by and through their undersigned counsel, hereby present for the

Court's consideration their respective proposed scheduling orders governing expert discovery in the above-captioned proceeding.

1.

The parties present their respective proposed scheduling orders pursuant to the Court's Order of July 30, 2009, which instructed the parties to submit such proposals within five days of a ruling by the Court denying, in whole or in part, Plaintiffs' Motion To Exclude the Expert Report of Dr. Kenneth Crews. The Court's Order denying Plaintiffs' motion was entered on September 3, 2009.

2.

The parties have conferred in an attempt to present the Court with a stipulated schedule, but were unable to reach agreement on such a schedule. Accordingly, the parties are submitting separate proposals for the Court's consideration. Plaintiffs' proposed scheduling order is attached as Exhibit A to this submission and Defendants' proposed scheduling order is attached as Exhibit B.

3.

In support of their proposed schedule, which is attached as Exhibit A, Plaintiffs state that their proposed schedule begins with the deposition of Dr. Crews and thus comports with local civil rule 26.2, which clearly contemplates a party having the opportunity to depose the other party's witness before deciding

whether to retain a testifying expert witness of its own. Plaintiffs' proposed scheduling order also comports with general practice in copyright actions – where the use of expert testimony is less routine – as opposed to relying on rules specifically designed for patent actions, which necessarily entail the initial submission of dueling expert reports. Adhering to the local civil rules is particularly appropriate in this case because the Court has ruled that large parts of Dr. Crews' report represent inadmissible legal conclusions. Having the opportunity to depose Dr. Crews first will assist Plaintiffs in the determination whether or not they need to retain a testifying expert at all, a decision Plaintiffs are still weighing. This in turn could potentially spare the parties (and court) the time and expense of unnecessary reports, discovery, depositions, and trial time – efficiencies that will be lost if the schedule requires the Plaintiffs to file their own report first and only later depose Dr. Crews.

4.

In support of their proposed schedule, which is attached as Exhibit B, Defendants state that their proposed schedule generally conforms to the schedule for expert discovery set forth in the Patent Local Rules of the Northern District of Georgia. (See LPR 7.1-7.2.) Defendants' proposed schedule provides for a period wherein the parties exchange rebuttal reports and then a period for expert depositions begins. Defendants believe this schedule is an efficient and fair

method for completing expert discovery in this case because it allows both sides to have all expert reports in hand before depositions begin and provides a flexible deposition period to easier accommodate multiple experts' schedules. Also, because Federal Rule of Civil Procedure 26(2)(B) requires that the parties' expert reports contain "a complete statement of all opinions the witness will express and the basis and reasons for them," neither party will suffer any prejudice by serving expert reports in advance of the commencement of expert depositions.

WHEREFORE, the Parties respectfully request entry of a scheduling order governing expert discovery.

Respectfully submitted this 11th day of September, 2009.

/s/ John H. Rains IV

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document was prepared in Times New Roman 14 point font.

/s/ John H. Rains IV  
John H. Rains IV

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing **JOINT SUBMISSION OF PROPOSED SCHEDULING ORDER REGARDING EXPERT DISCOVERY** with the Clerk of Court using the CM/ECF filing system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 11th day of September, 2009.

/s/ John H. Rains IV  
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