

EXHIBIT B**DRAFT SCHEDULING ORDER FOR PATENT CASES****A. General Matters**

1. **Joinder and Amendment of Pleadings:** By _____ (60 days¹ from the date of the Scheduling Order), any motion for joinder of additional parties and amendment of pleadings shall be filed.
2. **Local Rules**
 - a. The parties shall comply with the Rules of the United States District Court for the District of Maryland ("Local Rules"); and
 - b. This is an action in which Fed. R. Civ. P. 26(a)(1) does not apply. See Local Rule 104.10.
3. **Scheduling Inquiries:** Any inquiries concerning the schedule should be directed to my chambers, not to the Clerk's Office.
4. **Attorneys' Fees:** In any situation in which attorneys' fees may be sought by the prevailing party, counsel must be familiar with the provisions of Local Rule 109.2 and the Rules and Guidelines for Determining Lodestar Attorneys' Fees in Civil Rights and Discrimination Cases which are Appendix B to the Local Rules.
5. **Dates:** Dates herein for filing or service are deadlines for actual delivery to the adverse party or the Clerk or filing using the CM/ECF system.

B. Discovery

1. **Close of Fact Discovery**
 - a. Deadline: Discovery (other than expert discovery) shall be completed by _____ (180 days from the date of the Scheduling Order).
2. **Planning for Discovery:** This action is exempted from the requirements of Fed. R. Civ. P. 26(d) and (f). *See* Local Rule 104.10. However, you are encouraged to confer with one another immediately in order to:
 - a. Identify the issues;

¹ All proposed durations herein are subject to modification.

- b. Set a discovery plan;
 - c. Determine if the case can be resolved before your clients incur further litigation expense; and
 - d. Establish a cordial professional relationship among yourselves.
3. **Applicability of Local Rules to Discovery:** Subject to Local Rule 803.2, all of the provisions of Local Rule 104 apply, including the following:
- a. All written discovery requests must be served in time to assure that they are answered before the discovery deadline. An extension of the deadline will not be granted because of unanswered discovery requests;
 - b. The existence of a discovery dispute as to one matter does not justify delay in taking any other discovery. The filing of a motion to compel or a motion for a protective order will not result in a general extension of the discovery deadlines;
 - c. No discovery materials should be filed with the Court;
 - d. Motions to compel shall be filed in accordance with Local Rule 104.8; and
 - e. Please be familiar with the Discovery Guidelines of this Court adopted September 11, 1995. If you do not have a copy of the Guidelines, you may obtain one through the Clerk's Office.
4. **Expert Discovery:** Expert discovery shall proceed as follows:
- a. By _____ (180 days from the date of the Scheduling Order), each party shall:
 - (1) Advise each adverse party of the identity of all proposed expert witnesses as to matters which the proposing party bears the burden of proof;
 - (2) Provide Rule 26(a)(2) information; and
 - (3) Advise each adverse party of dates within 30 days on which each expert shall be available for deposition so that depositions can be taken.

- b. By _____ (210 days from the date of the Scheduling Order), each party shall:
- (1) Advise each adverse party of the identity of any proposed expert witnesses not identified in the previous submission;
 - (2) Provide Rule 26(a)(2) information; and
 - (3) Advise each adverse party of dates within 30 days on which each expert shall be available for deposition so that depositions can be taken.

5. **Objections:**

Except as provided in this rule or as otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, Section VIII of the Local Rules. A party may object, however, to responding to the following categories of discovery requests on the ground that they are premature in light of the timetable provided in Section VIII of the Local Rules:

- a. Requests seeking to elicit a party's claim construction position;
- b. Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;
- c. Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents; and
- d. Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents.

Where a party properly objects to a discovery request as set forth above, that party shall provide the requested information on the date on which it is required to be provided to an opposing party under Section C of this order, unless there are other legitimate grounds for objection.

C. **Patent Matters**

1. ***Disclosure Deadlines and Requirements***

a. **Initial Disclosure of Infringement Contentions**

- (1) Deadline: By _____ (30 days from the date of the Scheduling Order), any party claiming patent infringement shall serve on all parties an Initial Disclosure of Infringement Contentions.
- (2) Requirements: The Initial Disclosure of Infringement Contentions must separately setting forth for each allegedly infringing party, the following information:
 - i. Each claim of each patent in suit that is allegedly infringed by each allegedly infringing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;
 - ii. Separately for each allegedly infringed claim, each accused apparatus, product, device, process, method, act, or other instrumentality (Accused Instrumentality) of each allegedly infringing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;
 - iii. A chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;
 - iv. For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is

based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

- v. Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;
- vi. For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;
- vii. The date of conception and the date of reduction to practice of each asserted claim;
- viii. If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and
- ix. A party claiming patent infringement alleges willful infringement, the basis for such allegation.

b. Document Production Accompanying Initial Disclosure of Infringement Contentions

- (1) Deadline: By _____ (30 days from the date of the Scheduling Order) the party claiming patent infringement shall produce to each allegedly infringing party or make available for inspection and copying all certain documents accompanying the Initial Disclosure of Infringement Contentions.
- (2) Requirements: The documents produced shall relate to the following:
 - i. Any offers to sell or efforts to market each claimed invention prior to the date of the application for the patent; (A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102);

- ii. The standing of the party alleging infringement with respect to each patent upon which such allegations are based; and
- iii. A copy of the file history for each patent in suit.

c. **Initial Disclosure of Invalidity Contentions in Defense of Infringement Claims**

- (1) Deadline: By _____ (60 days from the date of the Scheduling Order) each party opposing a claim of patent infringement, shall serve on all parties its Initial Disclosure of Invalidity Contentions in Defense of Infringement Claims.
- (2) Requirements: Initial Disclosure of Invalidity Contentions in Defense of Infringement Claims shall contain the following information:
 - i. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

- ii. Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;
- iii. A chart identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and
- iv. Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

d. **Document Production Accompanying Initial Disclosure of Invalidity Contentions**

- (1) Deadline and Requirements: By _____ (60 days from the date of the Scheduling Order), the party opposing a claim of patent infringement shall produce, or make available for inspection and copying a copy of any prior art identified in the Initial Disclosure of Invalidity Contentions that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

e. **Advice of Counsel Disclosure**

- (1) Deadline: not later than thirty (30) days after entry of the Court's claim construction order, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall serve on all parties an Advice of Counsel Disclosure.
- (2) Requirements: In connection with the Advice of Counsel Disclosure, the disclosing party shall:
 - i. Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client and work product protection have been waived;

- ii. Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived;
- iii. Serve a privilege log identifying any documents other than those identified in L.R. 804.7, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice which the party is withholding on the grounds of attorney-client privilege or work product protection; and
- iv. A party who does not comply with the requirements of L.R. 804.7 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or by order of the Court.

2. *Claim Construction Deadlines and Requirements*

a. *Claim Chart*

- (1) Deadline: By _____ (60 days from the date of the Scheduling Order), the party asserting infringement shall serve on each alleged infringing party a Claim Chart.
- (2) Requirements: The Claim Chart shall include the following information:
 - i. Each claim of any patent in suit which the party alleges was infringed;
 - ii. Separately for each allegedly infringed claim, the identity of each accused apparatus, product, device, process, method, act, or other instrumentality (Accused Instrumentality) of each allegedly infringing party;
 - iii. Whether such infringement is claimed to be literal or under the doctrine of equivalents;
 - iv. Where each element of each infringed claim is found within each Accused Instrumentality; and

- v. If the party alleging infringement wishes to preserve the right to rely on that party's own apparatus, product, device, process, method, act, or other instrumentality as evidence of commercial success, the party must identify, separately for each claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

b. Proposed Claim Construction Statement

(1) Deadline: By _____ (60 days from the date of the Scheduling Order), the party asserting infringement shall also serve on each alleged infringing party a Proposed Claim Construction Statement. containing the following information for each claim in issue:

(2) Requirements: The Proposed Claim Construction Statement shall contain the following information for each claim in issue:

- i. Identification of any special or uncommon meanings of words or phrases in the claim;
- ii. All references from the specification that support, describe, or explain each element of the claim;
- iii. All material in the prosecution history that describes or explains each element of the claim; and
- iv. Any extrinsic evidence that supports the proposed construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law.

c. Responsive Claim Chart

(1) Deadline: By _____ (90 days from the date of the Scheduling Order), the alleged infringing parties shall serve upon the party claiming infringement a Responsive Claim Chart.

- (2) Requirements: The Responsive Claim Chart shall contain the following:
- i. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);
 - ii. Whether the prior art anticipates the claim or renders it obvious. If a combination of prior art references makes a claim obvious, that combination must be identified;
 - iii. Where, specifically, within each item of prior art each element of the claim is found;
 - iv. All grounds of invalidity other than anticipation or obviousness of any of the claims listed in the Claim Chart. This identification must be as specific as possible. For example, each party asserting a best mode defense must set forth with particularity what constitutes the inventors best mode, specifically citing information or materials obtained in discovery to the extent feasible. Each party asserting an enablement defense must set forth with particularity what is lacking in the specification to enable one skilled in the art to make or use the invention; and

- v. If the claimant has alleged willful infringement, the date and a document reference number for each opinion of counsel upon which the party relies to support a defense to the willfulness allegation, including, but not limited to, issues of validity, and infringement of any patent in suit.

d. **Responsive Claim Construction Statement**

(1) Deadline: By _____ (90 days from the date of the Scheduling Order), the alleged infringing parties shall serve upon the party claiming infringement a Responsive Claim Construction Statement.

(2) Requirements: Responsive Claim Construction Statement shall contain the following:

- i. Identification of any special or uncommon meanings of words or phrases in the claim in addition to those disclosed in the Proposed Claim Construction Statement;
- ii. All references from the specification that support, describe, or explain each element of the claim in addition to or contrary to those described in the Proposed Claim Construction Statement;
- iii. All material in the prosecution history that describes or explains each element of the claim in addition to or contrary to those described in the Proposed Claim Construction Statement; and
- iv. Any extrinsic evidence that supports the proposed construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law.

e. **Amendments**: Amendment of a Claims Chart or a Responsive Claims Chart may be made only on stipulation of all parties or by Order of the Court, which shall be entered only upon a showing of excusable subsequent discovery of new information or extraordinary good cause.

f. **Joint Claim Construction Statement**

- (1) Deadline: By _____ (120 days from the date of the Scheduling Order), the parties, having met and conferred on claim construction, shall file a Joint Claim Construction Statement.
- (2) Requirements: The Joint Claim Construction Statement shall contain the following information:
 - i. The construction of those claims and terms on which the parties agree;
 - ii. Each party's proposed construction of each disputed claim and term, supported by the same information that is required in the respective claim construction statements; and
 - iii. For any party who proposes to call one or more witnesses at any claim construction hearing, the identity of each such witness, the subject matter of his or her testimony, and an estimate of the time required for the testimony.

g. **Opening Brief for Claim Construction Hearing**

- (1) Deadline and Requirements: By _____ (120 days from the date of the Scheduling Order), the parties shall file and serve opening briefs with supporting evidence and identification of any proposed Claim Construction Hearing witnesses.

h. **Responsive Brief for Claim Construction Hearing**

- (1) Deadline and Requirements: By _____ (150 days from the date of the Scheduling Order), the parties shall file and serve any responsive brief and supporting evidence directly rebutting their opponents supporting evidence and identifying any additional proposed Claim Construction Hearing witnesses.

i. **DVD Presentation Submissions**

- (1) If directed by the Court on its own motion or on motion of a party each party shall file, under seal and serve a DVD or equivalent of no more than 30 minutes that includes a

description of the technology at issue and a summary of the party's primary factual and legal positions.

- (2) The presentations shall be filed pursuant to a schedule to be set by further Order that shall include an opportunity for each side to comment ex parte on the other's presentation;
- (3) The presentations need not be elaborate but, rather, only what is sufficient to be clear.
- (4) By a date to be established by further order if necessary, each party shall serve (ex parte) and file under seal, a letter of no more than five pages commenting on the other party's tape.

j. **Hearing Date**

- (1) There shall be a claim construction hearing _____ commencing at _____.

D. Summary Judgment Motions

1. Any dispositive motions shall be filed no later than 15 days after the Court's ruling on claim construction issues.
2. The parties may, but need not, file dispositive motions that are not affected by claim construction prior to the aforesaid due date.
3. If more than one party intends to file a summary judgment motion, the provisions of Local Rule 105.2.c shall not apply.
4. A hearing on summary judgment motions shall be scheduled if necessary.