

Memorandum

September 6, 2013

TO: Members of the Bar and Public
FROM: Louise York, Chief Deputy Clerk
RE: Public Comment Period for Proposed Amendments to the Local Rules

The Committee on the Local Rules of Practice have proposed amendments to the following rules:

DUCiv R 7-1	Motions and Memoranda
DUCiv R 7-5	Hyperlinks in Court Filings
DUCiv R 37-1	Discovery: Motions and Disputes; Referral to Magistrate Judge
DUCiv R 83-1.1	Attorneys Admission to Practice
DUCivR 83-1.5.2	Reciprocal Discipline
DUCiv R 83-5	Custody and Disposition of Exhibits
DUCrim R 12-1	Pretrial Motions: Timing, Form, Hearings, Motions to Suppress, Certification, and Orders; Motions under the Speedy Trial Act

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The Committee also proposes enactment of a set of stand alone rules to govern the procedure for patent law litigation.

[Local Patent Rules](#) LPR 1.1 through 7.7

The Committee welcomes public comment on the rule proposals. The comment period will end on September 30, 2013. Comments may be sent by email to Louise_York@utd.uscourts.gov, or sent by mail to the following address:

District Court Local Rules Comment
Office of the Clerk of Court
350 South Main Street, Suite 150
Salt Lake City, Utah 84101

Summary of Proposed Amendments to Local Rules of Practice

The Local Rules Committee submits the proposed amendments to the local civil rules for public comment. The proposed amendments are as follows:

- DUCiv R 7-1** The amendment adds a new subsection to clarify that it is not permissible to file a joinder in a motion filed by another party. Each party must file a separate motion but may incorporate arguments and reasoning from prior filings.
- DUCivR 7-5** The rule is amended to provide further guidance on the use of hyperlinks in court filings
- DUCivR 37-1** The amendment augments the process for resolving discovery disputes by defining the steps that would establish reasonable efforts to reach agreement with opposing counsel. The amendment provides for use of an expedited process to obtain judicial review of discovery issues by initiating a discovery dispute letter adjudication prior to allowing the party to file a discovery motion.
- DUCiv R 83-1.1** Attorneys admitted pro hac vice will be required to certify on the application for admission that they will read and comply with the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility. Modifications are made in the official form to reflect the change in the rule. The Standards of Professionalism and Civility would now be adopted by the court, not merely endorsed.
- DUCiv 83-1.5.2** An attorney who is a member of the court's bar will be automatically suspended or disbarred when that attorney has been suspended or disbarred from the practice of law by the Utah State Courts. The attorney may challenge the suspension or disbarment. This amendment eliminates the possibility of an attorney suspended or disbarred by the state practicing in federal court while the response period is running to an order to show cause.
- DUCiv R 83-5** The amendments reflect current practices for numbering exhibits and allowing them to be electronically labeled.
- DUCrim R 12-1** The criminal rule is amended to allow for the filing of a motion and memorandum in support as a single document, consistent with the modification in DUCiv R 7-1.
- Local Patent Rules** These rules would provide an expedited schedule and specialized process for adjudication patent law claims.

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) Motions.

All motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Copies shall be provided as required by DUCivR 5-1.

(1) No Separate Supporting Memorandum for Written Motion.

The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

- (A) An initial separate section stating succinctly the precise relief sought and the specific grounds for the motion; and
- (B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.

Specific instructions regarding Motions for Summary Judgment are provided in DUCivR 56-1. Failure to comply with the requirements of this section may result in sanctions, including (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) any other sanction deemed appropriate by the court.

(2) Exceptions to Requirement That a Motion Contain Facts and Legal Authority.

Although all motions must state grounds for the request and cite applicable rules, statutes, case law, or other authority justifying the relief sought, no recitation of facts and legal authorities beyond the initial statement of the precise relief sought and grounds for the motion shall be required for the following types of motions:

- (A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
- (B) to continue either a pretrial hearing or motion hearing;
- (C) to appoint a next friend or guardian ad litem;
- (D) to substitute parties;
- (E) for referral to or withdrawal from the court's ADR program;
- (F) for settlement conferences; and
- (G) for approval of stipulations between the parties.

For such motions, a proposed order shall be attached as an exhibit to the motion and also emailed in an editable format to the chambers of the assigned judge.

(3) Length of Motions.

- (A) Motions Filed Pursuant to Rules 12(b), 12(c), 56, and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, statement of elements and undisputed material facts, and exhibits.
- (B) All Other Motions: All motions that are not listed above must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of contents, statement of precise relief sought and grounds for relief, concise

introduction and/or background section, statements of issues and facts, and exhibits.

(4) **Motions Seeking Relief Similar to Another Party's Motion**

Each party seeking relief from the Court must file its own motion stating the relief sought and the basis for the requested relief. ~~Joinder in another party's motion is not permitted.~~ However, a party may incorporate **by reference** the arguments and reasons set forth in **another party's prior motion or memorandum** to the extent applicable to that party.

DUCivR 7-5 HYPERLINKS IN COURT FILINGS

(a) ~~Permissible~~ Encouraged and Impermissible Hyperlinks.

As a convenience for the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. For purposes of this rule, a hyperlink is a reference within an electronically filed document that permits a user to click on the reference so as to be directed to other content. Standard legal citations must still be used so that those who desire to retrieve referenced material may do so without use of an electronic service.

(1) ~~Permissible~~ Encouraged Hyperlinks.

(A) HA hyperlinks to other portions of the same document and to material elsewhere in the record, such as exhibits or deposition testimony, are is permissible encouraged.

(B) A hyperlink to an internet resource containing legal authority from a government site or to legal authority from recognized electronic research services, such as Westlaw, Lexis/Nexis-, Google Scholar, Casemaker, Fastcase or Findlaw ~~and governmental rules and regulations,~~ is permissible.

(2) Impermissible Hyperlinks.

A hyperlink to any other internet resource not identified in subsection (a)(1)(B) is impermissible without leave of court and the content of such an internet resource shall not be part of the record. If a litigant wishes to include in the record material from such a resource, otherwise contained in an impermissible hyperlink, such material it must be made part of the record in some other fashion, such as filing the material as an exhibit or by filing a Notice of Conventional Filing pursuant to Section II(E)(7) of the District of Utah CM/ECF Administrative Procedures Manual and filing a copy of the material on a ~~diskette~~ electronic media in PDF format.

Because extensive amendments have been made in the current rule, the proposed rule will replace the existing rule in its entirety.

**DUCivR 37-1 DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO
MAGISTRATE JUDGE**

(a) Discovery Disputes.

(1) The court will not entertain any discovery motion unless it authorizes the filing of one.

(2) When a discovery dispute arises, the parties must make reasonable efforts to reach agreement on the dispute. At a minimum, those efforts should include a prompt written communication to the opposing party:

(i) identifying the discovery disclosure/request(s) at issue, the response(s) thereto, and why those responses/objections are inadequate,

(ii) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so, and

(iii) indicating the deadline for filing either a Discovery Dispute Letter as set forth in (b) or a Notice of Discovery Dispute as set forth in (a)(4).

(3) A discovery dispute arises when a party does not receive a response to a discovery request or disclosure obligation or receives a response and has reason to believe the response is deficient.

(4) If the parties cannot resolve the dispute within twenty-one (21) days of the dispute arising, the parties must file either a Discovery Dispute Letter as set forth in (b) or a Notice of Discovery Dispute identifying the dispute, the date it arose, and the intention to continue to meet and confer on the matter. Parties should only file a Notice of Discovery Dispute if they have not completed the meet and confer process within twenty-one (21) days of the dispute arising.

(b) Discovery Dispute Letters

If the meet and confer process fails to resolve the dispute, each party should submit a letter (the body of which should not exceed 500 words) describing the dispute to the court and citing relevant authority. The letter must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters. Such statement must recite, in addition, the date, time, and place of such consultation and the names of all participating parties or attorneys. The parties should designate amongst themselves one party to attach to its letter a copy of the discovery request and the response to the request to which a party objects. Each party should also e-mail chambers a proposed Order setting forth the relief requested in an editable format.

(c) Timing of Discovery Dispute Letters

A party must file the Dispute Letter no later than twenty-one (21) days following the beginning of the dispute or the filing of a Notice of Discovery Dispute. Failure to submit a letter within this period may result in sanctions, potentially including waiver of any relief sought for the discovery dispute or assent to the disputed condition. The parties must file a motion for expedited treatment in CM/ECF to facilitate resolution of the dispute as soon as practicable.

(d) Discovery Dispute Conference

The court may set a conference upon receipt of the first letter and need not wait for any additional letters before setting the conference.

(1) The court may decide the issue on the basis of the letters or authorize further briefing without holding the conference consistent with DUCivR 7-1(f).

(2) If after considering the matter the court determines to have the issues fully briefed, the court will authorize the filing of a discovery motion and set a briefing schedule.

Parties may not file a discovery motion without authorization of the court.

(e) Discovery Motions .

Discovery Motions under Fed. R. Civ. P. 26 or 37 must be accompanied by a copy of the discovery request at issue, the response to the request, and a succinct statement summarizing the dispute.

(f) Discovery Motions Before Magistrate Judge.

Discovery Dispute Letters and Discovery Motions under Fed. R. Civ. P. 26 and 37 may be referred to a magistrate judge for hearing or disposition. The magistrate judge has authority to enter appropriate orders granting such motions, compelling discovery, instituting protective orders, awarding sanctions, or finding contempt. The magistrate judge, however, may not enter any order which is dispositive of a substantive issue in the case except as permitted by 28 U.S.C. § 636(b)(1)(B) and (C) or § 636(b)(3). (The provisions of 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72 cover review of magistrate judges' orders.)

Comment

In determining when a dispute has arisen, the parties should consider the communications between the parties, the complexity of the dispute, and the amount of discovery. For example, a failure to provide certain documents may be apparent upon receipt of documents pursuant to a document request, and the parties should begin to meet and confer immediately. In other cases, a failure to provide certain documents may not become apparent until a witness mentions such documents during a deposition. The parties should begin to meet and confer as soon as the failure becomes apparent. When one party refuses to produce the documents in question, the dispute has arisen.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) Practice Before the Court.

Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

(b) Admission to the Bar of this Court.

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court. (2) Admissions Procedure.

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee. (B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made. (C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to [sections \(a\) and \(d\)](#) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge. (D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States (and the constitution of the State of Utah;) that I will discharge the duties of attorney and counselor at law as an officer of (the courts of the State of Utah and) the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah." ⁸

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately if they have a change in name, e-mail address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

(c) Active Member Status Requirement.

Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in [DUCivR 83-1.2](#).

(d) Admission Pro Hac Vice.

Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:

(1) Application and Fee. Applicants must complete and submit to the clerk an [application form](#) available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written

consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee, ~~and~~ self certification of good standing in the bar of the highest court of another state or the District of Columbia and the applicant's agreement to read and comply with the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility. Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the District of Utah, the Federal Public Defender or other federal agency is recused from the case, the associate local counsel requirement is waived. (2) Motion for Admission. Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(3) Revocation of Pro Hac Vice Admission.

Any judge of the court may revoke the admission of an attorney who has been admitted Pro Hac Vice for good cause shown, including but not limited to, violation of the rules of this court or failure to comply with court orders. An attorney admitted Pro Hac Vice may not continue to appear Pro Hac Vice without associated local counsel if the associated local counsel withdraws from the representation.

(e) Attorneys for the United States.

Attorneys representing the United States government or any agency or instrumentality thereof, including the Federal Public Defender's Office, and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing agencies of the government and resident assistant Federal Public Defenders will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorney" by the United States Attorney for the District of Utah or "Special Attorney" by the Attorney General of the United States, and (ii) are members in good standing of the highest ~~court bar~~ of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

(f) Pro Se Representation.

Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.

(g) Rules Standards of Professional Conduct and Standards of Professionalism and Civility.

All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court. The court ~~adopts endorses~~ the Utah Standards of Professionalism and Civility ([Appendix V](#)) to guide attorney conduct in cases and proceedings in this court.

Admission Pro Hac Vice Instructions and Forms

Attorneys who are not members of this Court's Bar may practice before this Court only after having been admitted pro hac vice pursuant to DU.Civ. Rule 83-1.1 (d). Non-resident attorneys who wish to be admitted must associate local counsel to sponsor their temporary admission. Local counsel shall move the admission of the pro hac counsel, and substitute in court if required. Local Counsel must file the following - with the court:

1. Motion by local counsel for admission of the pro hac vice attorney
This may be filed electronically and the \$15.00 fee paid on Pay.gov
2. Attached to the motion as an exhibit is the completed application for admission pro hac vice completed by the attorney seeking admission
3. Also attached as an exhibit should be a proposed order admitting the attorney.

Local counsel shall encourage pro hac vice attorneys to submit their electronic filing registration form as an exhibit to the application, noting that, if the pro hac vice attorney is a registered electronic filer in any other federal court, he or she will be given a Utah login and password upon submission of the application form.

The forms and fees must be paid for each case to which the attorney seeks admission. Attorneys for the United States from other districts are exempt from the payment of the \$15.00 fee but must comply with the other requirements of the rule.

Counsel Submitting and Utah State Bar Number
Attorney For
Address
Telephone

UNITED STATES DISTRICT COURT
District of Utah _____ **Division**

	*	
_____	*	Motion for Pro Hac Vice Admission and Consent of Local Counsel
Plaintiff	*	
	*	
v.	*	
_____	*	Case No.
Defendant.		

Pursuant to D.U. Civ Rule 83-1.1(d), I move the admission of _____ as pro hac vice counsel for _____ (Plaintiff/Defendant) and consent to serve as local counsel. The application for pro hac vice admission is attached as exhibit A to this motion, an Electronic Case Filing Registration Form as exhibit B, and the admission fee, if required, has been paid to the court with the submission of this motion.

Dated

Signature of local counsel

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

APPLICATION FOR ADMISSION PRO HAC VICE

Name of Attorney: _____
Firm Name: _____
Business Address: _____

Telephone: _____

Current bar memberships and date of admission:

Jurisdiction	Bar Number	Admitted on
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have you ever been the subject of disciplinary action by any bar to which you have been admitted?
___ No ___ Yes (provide additional information)

Prior pro hac vice admissions in the District of Utah: _____ none

Case Name: _____
Case Number: _____
Admission Date: _____

(Attach list of other cases separately if more space is needed.)

I certify that I am a member in good standing of all bars to which I have been admitted. I further agree to read and comply with the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility. This certification that the foregoing is true and correct is made under penalty of perjury.

Signature

Date

Non resident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee. All other attorneys must pay a fee of \$15.00 concurrent with this application. This application must be filed as an attachment to a motion for admission and consent filed by local counsel.

If you have not previously registered for CM/ECF in the District of Utah, please attach a completed Electronic Case Registration Form with this application to receive your login and password.

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

_____,
Plaintiff

v.

_____,
Defendant

:
:
:
: ORDER FOR PRO HAC VICE ADMISSION
:
:
:
:
: Case Number

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of _____ in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this _____ day of _____, 20____.

U.S. District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

ELECTRONIC CASE FILING REGISTRATION FORM

Attorneys who are active or current pro hac vice members of the District of Utah's Bar may register for the District of Utah Electronic Filing System by (i) completing the required training and (ii) signing and returning this form to the Court. Please review carefully the registration conditions set forth below before signing.

Name - First	Middle	Last	Firm Name
Mailing Address			City, State, Zip
Utah State Bar # (if applicable)			Telephone Number

By signing this form, I understand and consent to the following:

- Pursuant to Fed. R. Civ. P. 5(b)(2)(D), I will receive all items required to be served under Fed.R.Civ.P. 5(a) and 77 (d) and Fed. R. Crim P. 49 by either (i) notice of electronic filing, or (ii) e-mail transmission;
- Such electronic service will constitute service and notice of entry as required by those rules;
- I waive my right to service by USPS mail;
- I will abide by all Court rules, orders, and procedures governing the use of the electronic filing system;
- The combination of user ID and password issued by this Court will serve as the equivalent of my signature when I file documents using the District of Utah's electronic filing system;
- I will carefully examine all documents prior to filing them electronically with this Court to either (i) redact sensitive and private information pursuant to DUCiv R , or (ii) move that the filing be sealed;
- I will secure and protect my Court-issued password against unauthorized use or compromise; and
- I will notify the Clerk of this Court within 24 hours when I (i) have a change of name, firm, address, or e-mail address to ensure proper and timely service, or (ii) learn that my password has been compromised.

Email Address(es):

Primary E-mail address _____

Up to two additional e-mail addresses 1) _____ ,

2) _____

To receive a login, you must complete one of these four options. Please check appropriate box.

<input type="checkbox"/>	I have attended the CMECF Training for Attorneys given by the Court.
<input type="checkbox"/>	I have completed the CMECF Training for Attorneys given by an in-house trainer in my firm.
<input type="checkbox"/>	I have completed the CMECF Online Computer-Based Training modules on the court website.
<input type="checkbox"/>	I have an ECF account in the Utah Bankruptcy Court or in another Federal District Court.

Date: _____

Signature: _____

Please mail this completed form to: **United States District Court, Office of the Clerk, ATTN: CM/ECF Registration, 350 S. Main St., Suite 150, Salt Lake City, Utah 84101**

or include this form as a pdf attachment with your Application for Pro Hac Vice.

After this Court processes this form, you will receive by email or US Mail your user ID and password that will enable you to access the system. The User Guide and administrative procedures for system use may be downloaded at: <http://www.utd.uscourts.gov/cmecf/ecfpage.html>. Please call the Clerk's Office Help Desk at (801) 524-6851 if you have questions concerning registration, training, or use of the electronic filing system.

DUCivR 83-1.5.2 RECIPROCAL DISCIPLINE

(a) Notice to the Court.

Any member of the bar of this court who has been disciplined by another jurisdiction must notify the clerk of that discipline by sending a copy of the disciplinary order to the clerk. The clerk may also receive notice of disciplinary action from the disciplining jurisdiction. The clerk will assign the matter a disciplinary case number, review the order, review the attorney's membership status with the court, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

Pursuant to the provisions of DUCiv R 83-1.1 (b)(1) the Chair of the Disciplinary Panel will enter an automatic order of disbarment or suspension upon receipt of notice of an order disbaring or suspending an attorney from the Utah State Bar. The attorney may challenge the discipline by filing a motion and demonstrating good cause as to why the suspension or disbarment should not be imposed in this court.

(b) Procedure.

In cases in which discipline imposed is not suspension or disbarment from the Utah State Bar, ~~the~~ The Panel Chair will issue an order to show cause why reciprocal discipline should not be imposed by this court. The clerk must serve the order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel will review any response received from the attorney. The Panel may then

- (1) impose different or no discipline;
- (2) impose reciprocal discipline;
- (3) refer the matter to the Committee for review and recommendations; or
- (4) set the matter for hearing before a neutral hearing examiner, a judicial officer designated by the Chief Judge upon recommendation by the Panel, or before the Panel itself.

Similar discipline will be imposed unless the attorney clearly demonstrates or the Panel finds that the other jurisdiction's procedure constituted a deprivation of due process, the evidence establishing the misconduct warrants different discipline, or the imposition of discipline would result in a grave injustice.

DUCivR 83-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

(a) Prior to Trial.

(1) Marking Exhibits. Prior to trial, each party must mark all the exhibits it intends to introduce during trial by utilizing exhibit labels ~~(stickers) obtained from the clerk of court~~ **in the format prescribed by the clerk of court. Electronic labels are allowed.** Plaintiffs must use consecutive numbers; defendants must use consecutive letters. **If the number or nature of the exhibits makes standard marking impracticable, the court may prescribe an alternate system and include instructions in the pretrial order.**

(2) Preparation for Trial. After completion of discovery and prior to the final pretrial conference, counsel for each party must (i) prepare and serve on opposing counsel a list that identifies and briefly describes all marked exhibits to be offered at trial; and (ii) afford opposing counsel opportunity to examine the listed exhibits. Said exhibits also must be listed in the final pretrial order. **Exhibits are part of the public record and personal information should be redacted pursuant FRCiv P 5.2 and DUCiv R 5.2-1.**

(b) During Trial.

(1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.

(2) Custody of the Parties. Unless the court otherwise orders, all other exhibits admitted into evidence during trial will be retained in the custody of the party offering them. Such exhibits will include, but not be limited to, the following types of bulky or sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(c) After Trial.

(1) Exhibits in the Custody of the Clerk. Where the clerk of court does take custody of exhibits under [subsection \(b\)\(1\)](#) of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken, which receipt will be filed in the case.

(2) Removal from Evidence. Parties are to remove all exhibits in the custody of the clerk of court within ~~thirty (30) days~~ **fourteen (14) days** after the mandate of the final reviewing court is filed **or, if no appeal is filed, upon the expiration of the time for appeal.** Parties failing to comply with this rule will be notified by the clerk to remove their exhibits and sign a receipt for them. Upon their failure to do so within ~~thirty (30)~~ **fourteen (14)** days of notification by the clerk, the clerk may destroy or otherwise dispose of the exhibits as the clerk deems appropriate.

(3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in [subsection \(b\)\(2\)](#) of this rule will retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted, until any appeal is resolved or the time for appeal has expired.

(4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, will make available any or all original exhibits in its possession, or true copies thereof, to enable such other party to prepare the record on appeal.

(5) Exhibits in Appeals. When a notice of appeal is filed, each party will prepare and submit to the clerk of this court a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who have custody of exhibits so listed are charged with the responsibility for their safekeeping and transportation **if required** to the court of appeals. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk of this court will remain in the custody of the respective party, such party will be responsible for forwarding the same to the clerk of the court of appeals on request.

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS; MOTIONS UNDER THE SPEEDY TRIAL ACT

(a) Timing.

Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than fourteen (14) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

(b) Form.

Motions must set forth succinctly, but without argument, the specific ground of the relief sought.

~~(1) Supporting Memoranda.~~

~~(A) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:~~

~~(1) No Separate Supporting Memorandum for Written Motion. The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:~~

~~(A) An initial separate section stating succinctly the precise relief sought and the specific grounds for the motion; and~~

~~(B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.~~

~~(2) Affidavits. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits.~~

~~(B3) Concise Motions and Memoranda. Motions and mMemoranda must be concise and state each basis for the motion and limited citations.~~

~~(€4) Length of Motions and Memoranda; Filing Times. There are no page limits to motions and memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within fourteen (14) days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.~~

~~(D)~~ 5) Citations of Supplemental Authority.

When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

~~(E)~~ 6) Unpublished Decisions. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCivR 7-2.

~~(F)~~ 7) Exceptions to Requirement That a Motion Contain Facts and Legal Authority. Although all motions must state grounds for the request and cite applicable rules, statutes, case law, or other authority justifying the relief sought, no recitation of facts and legal authorities beyond the initial statement of the precise relief sought and grounds for the motion shall be required for the following types of motions:

- ~~(i)~~ (A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
- ~~(ii)~~ (B) to continue either a pretrial hearing or motion hearing; and
- ~~(iii)~~ (C) for motions to suppress unless otherwise directed by the court.

~~(G)~~ 8) Failure to eComply.

Failure to comply with the requirements of this section may result in sanctions that may include ~~(i)~~ returning the motion to counsel for resubmission in accordance with the rule; denial of the motion; or, ~~(ii)~~ other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section.

(c) Failure to Respond.

Failure to respond timely to a motion may result in the court's granting the motion without any further notice.

~~(d)~~ **3) Oral Argument on Motions.** The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time, and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

(ee) Notification of Oral Testimony.

When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The

opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.

(df) Motion to Suppress Evidence.

A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.

(eg) Certification by Government.

Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

(fh) Preparation and Entry of Order.

When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within seven (7) days after service.

(gi) Motions Under the Speedy Trial Act (18 U.S.C. § 3161 et seq.).

All motions for extension of time or continuance under the Speedy Trial Act shall state:

- (1) the event and date that activated the time limits of the Speedy Trial Act (e.g., “defendant arrested April 1, 2011, indictment or information due within 30 days”; “defendant appeared before United States Magistrate Judge May 1, 2011, jury trial to commence within 70 days”);
- (2) the date the act is due to occur without the requested extension or continuance;
- (3) whether previous motions for extensions or continuances have been made, the disposition of the motions, and, for any motion that was granted, whether the court found the period of delay resulting from that extension or continuance to be excludable under the Speedy Trial Act;
- (4) whether the delay resulting from the requested extension or continuance is excludable under the Speedy Trial Act;
- (5) specific reasons for the requested extension or continuance, including why the act cannot be done within the originally allotted time;
 - (A) If the reason given for the extension is that other litigation presents a scheduling conflict, the motion must also:
 - (i) identify the litigation by caption, case number, and court;
 - (ii) describe the action taken in the other litigation, if any, to request a continuance or deferment;
 - (iii) state the reasons why the other litigation should receive priority;
 - (iv) state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and
 - (v) recite any other relevant circumstances.
 - (B) If an extension is requested due to the complexity of the case, including voluminous discovery, the motion must include specific facts demonstrating such complexity.

(C) If the motion is sought due to some type of personal hardship that counsel or the client will suffer if an extension is not granted, the motion must state the specific nature of that hardship and when the hardship might be resolved;

(6) an explanation of how the reasons offered in support of the motion justify the length of the extension or continuance that has been requested;

(7) whether opposing counsel objects to the requested extension or continuance;

(8) when the motion is made by counsel for the defendant, the motion must indicate whether the defendant agrees with the requested extension or continuance;

(9) the impact, if any, on the scheduled trial or other deadlines; and

(10) the precise relief requested by the motion.

If the motion would require divulging trial strategy or information of a highly personal nature, including medical data, the movant may seek leave to file the motion under seal. If trial strategy would be revealed, the motion and request for leave may be presented ex parte.

All such motions shall be accompanied by a proposed order for the Court's consideration. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the deadline(s) being extended and the new date(s) for the deadline(s) and shall include the findings required under the Speedy Trial Act.

See DUCrimR 49-1, Filing of Papers; DUCrimR 56-1, Office of Record; Court Library; Hours and Days of Business; and DUCrimR 57-1, General Format of Papers.

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UNITED STATES DISTRICT COURT FOR THE
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LOCAL PATENT RULES

PREAMBLE

These Local Patent Rules provide a standard structure for patent cases that will permit greater predictability and planning for the Court and the litigants. These Rules also anticipate and address many of the procedural issues that commonly arise in patent cases. The Court's intention is to eliminate the need for litigants and judges to address separately in each case procedural issues that tend to recur in the vast majority of patent cases.

The Rules require, along with a party's disclosures under Federal Rule of Civil Procedure 26(a)(1), meaningful disclosure of each party's contentions and support for allegations in the pleadings. Complaints and counterclaims in most patent cases are worded in a bare-bones fashion, necessitating discovery to flesh out the basis for each party's contentions. The Rules require the parties to provide the particulars behind allegations of infringement, non-infringement, and invalidity at an early date. Because Federal Rule of Civil Procedure 11 requires a party to have factual and legal support for allegations in its pleadings, early disclosure of the basis for each party's allegations will impose no unfair hardship and will benefit all parties by enabling a focus on the contested issues at an early stage of the case. The Rules' supplementation of the requirements of Rule 26(a)(1) and other Federal Rules is also appropriate due to the various ways in which patent litigation differs from most other civil litigation, including its factual complexity; the routine assertion of counterclaims; the need for the Court to construe, and thus for the parties to identify, disputed language in patent claims; and the variety of ways in which a patent may be infringed or invalid.

The initial disclosures required by the Rules are not intended to confine a party to the contentions it makes at the outset of the case. It is not unusual for a party in a patent case to learn additional grounds for claims of infringement, non-infringement, and invalidity as the case progresses. After a reasonable period for fact discovery, however, each party must provide a final statement of its contentions on relevant issues, which the party may thereafter amend only "upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment." LPR 3.4.

The Rules also provide a standardized structure for claim construction proceedings, requiring the parties to identify and exchange position statements regarding disputed claim language before presenting disputes to the Court. The Rules contemplate that claim construction will be done, in most cases, toward the end of fact discovery. The committee of lawyers and judges that drafted and proposed the Rules considered placing claim construction at both earlier and later spots in the standard schedule. The decision to place claim construction near the end of fact discovery is premised on the determination that claim construction is more likely to be a meaningful process that deals with the truly significant disputed claim terms if the parties have had sufficient time, via the discovery process, to ascertain what claim terms really matter and why and can identify (as the Rules require) which are outcome determinative. The Rules' placement of claim construction near the end of fact discovery does not preclude the parties from proposing or the Court from requiring an earlier claim construction in a

particular case. This may be appropriate in, for example, a case in which it is apparent at an early stage that the outcome will turn on one claim term or a small number of terms that can be identified without a significant amount of fact discovery.

1. SCOPE OF RULES

LPR 1.1 Application and Construction

These Local Patent Rules (“LPR”) apply to all cases filed in or transferred to this District after their effective date in which a party makes a claim of infringement, non-infringement, invalidity, or unenforceability of a utility patent. The Court may apply all or part of the LPR to any case already pending on the effective date of the LPR. The Court may modify the obligations and deadlines of the LPR based on the circumstances of any particular case. If a party files, prior to the Claim Construction Proceedings provided for in LPR Section 4, a motion that raises claim construction issues, the Court may defer the motion until after the Claim Construction Proceedings.

LPR 1.2 Initial Attorney Planning Conference and Scheduling Orders

The parties shall hold their conference pursuant to Fed. R. Civ. P. 26(f) no later than 35 (thirty-five) days after the filing of the first answer. The parties must discuss and address those matters found in the form scheduling order contained in LPR Appendix “A.” A completed proposed version of the scheduling order is to be presented to the Court no later than seven (7) days after the Rule 26(f) conference unless the Court otherwise directs. No later than fourteen (14) days after entry of the claim construction ruling, the parties must file a motion for proposed scheduling order governing the remaining pretrial obligations.

LPR 1.3 Fact Discovery

(a) The parties shall commence fact discovery upon the date for the Initial Attorney Planning Conference under LPR 1.2 and shall complete it twenty-eight (28) days after the date for exchange of claim terms and phrases under LPR 4.1.

(b) No later than fourteen (14) days after entry of the claim construction ruling a party may move to reopen fact discovery. In support of the motion, the moving party shall explain why the claim construction ruling or disclosure of intent to rely on opinions of counsel necessitates further discovery and identify the scope of such discovery.

(c) Discovery Concerning Opinions of Counsel:

(1) A party shall disclose its intent to rely on advice of counsel and the following information to all other parties no later than seven (7) days after the ruling on claim construction:

- a. All written opinions of counsel and a summary of oral opinions (including the date, the attorney, and recipient) upon which the party will rely;
- b. All information provided to the attorney in connection with the advice;

- c. All written attorney work product developed in preparing the opinion that the attorney disclosed to the client; and
 - d. Identification of the date, sender, and recipient of all written and oral communications with the attorney or law firm concerning the subject matter of the advice by counsel.
- (2) The substance of a claim of reliance on advice of counsel offered in defense to a charge of willful infringement, and other information within the scope of a waiver of the attorney- client privilege based upon disclosure of such advice, is not subject to discovery until seven (7) days after the court's claim construction ruling.
 - (3) After advice of counsel information becomes discoverable under LPR 1.3(b), a party claiming willful infringement may take the deposition of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.
 - (4) This Rule does not address whether materials other than those listed in LPR 1.3(c) are subject to discovery or within the scope of any waiver of the attorney client privilege.

LPR 1.4 Confidentiality

DUCivR 26-2 shall govern confidentiality in patent cases. Any party may move the Court to modify the Protective Order provided for by DUCivR 26-2 for good cause. The filing of such a motion does not affect the requirement for or timing of any of the disclosures required by the LPR.

LPR 1.5 Certification of Disclosures

All disclosures made pursuant to LPR 1.3(c), 2.1, 2.3, 2.4, 2.5, 3.1, and 3.2 must be dated and signed by counsel of record (or by the party if unrepresented by counsel) and are subject to the requirements of Rules 11 and 26(g), and the sanctions available under Rule 37 of the Federal Rules of Civil Procedure.

LPR 1.6 Admissibility of Disclosures

The contentions provided for in LPR 2.3 and 2.4 are inadmissible as evidence on the merits absent a showing that the disclosures were made in bad faith.

Comment

The purpose of the initial disclosures pursuant to LPR 2.3 – 2.5 is to identify the likely issues in the case, to enable the parties to focus and narrow their discovery requests. Permitting use of the initial disclosures as evidence on the merits would defeat this purpose. A party may make reference to the initial disclosures for any other appropriate purpose.

LPR 1.7 Relationship to Federal Rules of Civil Procedure

Except as provided in this paragraph or otherwise ordered, a party may not object to a discovery request or decline to provide information otherwise required to be disclosed pursuant to FRCivP 26(a)(1) because the discovery request or disclosure requirement is premature in light of or conflicts with these Patent Rules. A party may object to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.CivP.26(a)(1)) on the ground that they are premature under the timetable provided in these Patent Rules. Once parties have made disclosures as required by these rules, the parties may conduct further discovery on these subjects.

- (a) requests for a party's claim construction position (LPR 4.1);
 - (b) requests to the patent claimant for a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality (LPR 2.3);
 - (c) requests to an accused infringer for a comparison of the asserted claims and the prior art (LPR 2.4-2.5);
 - (d) requests to an accused infringer for its non-infringement contentions (LPR 2.4);
- and
- (e) discovery concerning opinions of counsel (LPR 1.3(c))

Federal Rule of Civil Procedure 26's requirements concerning supplementation of disclosure and discovery responses apply to all disclosures required under the LPR. Federal Rule of Civil Procedure 37(a)(3)(A) & (c)(1) and the related local rules provide the process and consequences for partial or incomplete disclosures under the LPR.

2. PATENT INITIAL DISCLOSURES

Comment

LPR 2.3 – 2.5 supplement the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to LPR 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties' disclosures must be meaningful – as opposed to boilerplate and non- evasive. These provisions should be construed accordingly.

LPR 2.1 Accused Instrumentality Disclosures

A party claiming infringement shall disclose a list identifying each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of the opposing party of which the party claiming infringement is aware. Each Accused Instrumentality must 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 no later than seven (7) days after the defendant files its answer or other response.

LPR 2.2 Initial Disclosures

The plaintiff shall provide its initial disclosures under Fed.R.CivP.26(a)(1) (“Initial Disclosures”) no later than twenty-one (21) days after the defendant files its answer or other response, provided, however, if defendant asserts a counterclaim for infringement of another patent, plaintiff’s Initial Disclosures shall be due no later than twenty-one (21) days after the plaintiff files its answer or other response to that counterclaim. The defendant shall provide its Initial Disclosures no later than twenty-eight (28) days after the defendant files its answer or other response, provided, however, if defendant asserts a counterclaim for infringement of another patent, defendant’s Initial Disclosures shall be due no later than twenty-eight (28) days after the plaintiff files its answer or other response to that counterclaim. As used in this Rule, the term “document” has the same meaning as in Fed.R.CivP.34(a):

(a) A party asserting a claim of patent infringement shall produce or make available for inspection and copying, along with its Initial Disclosures the following non-privileged information in the party’s possession, custody or control:

(1) all documents concerning any disclosure, sale or transfer, or offer to sell or transfer, of any item embodying, practicing or resulting from the practice of the claimed invention or portion of the invention prior to the date of application for the patent in suit. Production of a document pursuant to this Rule is not an admission that the document evidences or is prior art under 35 U.S.C. § 102;

(2) all documents concerning the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or a priority date otherwise identified for the patent in suit, whichever is earlier;

(3) the file history from the U.S. Patent Office for each patent in suit and for each patent on which a claim for priority is based; and

(4) all documents concerning ownership of the patent rights by the party asserting patent infringement.

The producing party shall separately identify by production number which documents correspond to each category.

(b) A party opposing a claim of patent infringement shall produce or make available for inspection and copying, along with its Initial Disclosures the following non-privileged information in the party’s possession, custody or control:

(1) documents or things sufficient to show the operation and construction of all aspects or elements of each Accused Instrumentality identified with specificity in the pleading or Accused Instrumentality Disclosures of the party asserting patent infringement;

(2) a copy of each item of prior art of which the party is aware and upon which the party intends to rely that allegedly anticipates each asserted patent and its related claims or renders them obvious or, if a copy is unavailable, a description sufficient to identify the

prior art and its relevant details;

(3) the Accused Instrumentality; and

(4) a statement of the relevant time frame if not provided by the party claiming infringement, an estimate of the quantity of each Accused Instrumentality sold during the relevant time frame and the gross sales revenue in that time frame.

LPR 2.3 Initial Infringement Contentions

A party claiming patent infringement must serve on all parties “Initial Infringement Contentions” containing the following information no later than thirty-five (35) days after the defendant’s Initial Disclosure under LPR 2.2:

(a) identification of each claim of each patent in suit that is allegedly infringed by the opposing party, including for each claim the applicable statutory subsection of 35 U.S.C. § 271;

(b) separately for each asserted claim, identification of each Accused Instrumentality of which the party claiming infringement is aware. Each Accused Instrumentality must 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;

(c) a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) identification of whether each element of each asserted claim is claimed to be present in the Accused Instrumentality literally or under the doctrine of equivalents. For any claim under the doctrine of equivalents, the Initial Infringement Contentions must include an explanation of each function, way, and result that is equivalent and why any differences are not substantial;

(e) for each claim that 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. If alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(f) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(g) identification of the basis for any allegation of willful infringement; and

(h) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee’s apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted patent, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether there has been marking pursuant to statute.

LPR 2.4 Initial Non-Infringement, Unenforceability and Invalidity Contentions

Each party opposing a claim of patent infringement or asserting invalidity or unenforceability shall serve upon all parties its “Initial Non-Infringement, Unenforceability and Invalidity Contentions” no later than fourteen (14) days after service of the Initial Infringement Contentions. Such Initial Contentions shall be as follows:

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 2.3(c), that identifies as to each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

(1) identification, with particularity, 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 must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(a)(1) 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. A challenge to inventorship under 35 U.S.C. § 101 shall identify the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived;

(2) a statement of whether each item of prior art allegedly anticipates each asserted claim or renders it obvious. If a combination of items of prior art allegedly makes a claim obvious, each such combination, and the reasons to combine such items must be identified;

(3) a chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) a detailed statement of any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(b) or enablement or written description under 35 U.S.C. § 112(a).

(c) Unenforceability contentions shall identify the acts allegedly supporting and all bases for the assertion of unenforceability.

LPR 2.5 Document Production Accompanying Initial Invalidity Contentions

With the Initial Non-Infringement Unenforceability and Invalidity Contentions under LPR 2.3, the party opposing a claim of patent infringement or asserting invalidity or unenforceability shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

(a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 2.4 chart; and

(b) a copy of any additional items of prior art identified pursuant to LPR 2.3 that does not appear in the file history of the patent(s) at issue.

LPR 2.6 Disclosure Requirement in Patent Cases Initiated by Complaint for Declaratory Judgment

In a case initiated by a complaint for declaratory judgment in which a party files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 2.1 and 2.3 shall not apply unless a party makes a claim for patent infringement. If no claim of infringement is made, the party seeking a declaratory judgment must comply with LPR 2.4 and 2.5 no later than forty-nine (49) days after the defendant's Initial Disclosures.

3. FINAL CONTENTIONS

LPR 3.1 Final Infringement, Unenforceability and Invalidity Contentions

A party claiming patent infringement must serve on all parties "Final Infringement Contentions" containing the information required by LPR 2.3 (a)–(h) no later than twenty-one (21) weeks after the due date for service of Initial Infringement Contentions. Each party asserting invalidity or unenforceability of a patent claim shall serve on all other parties, at the same time that the Final Infringement Contentions are due "Final Unenforceability and Invalidity Contentions" containing the information required by LPR 2.4 (b), (c). Final Invalidity Contentions may rely on more than ten (10) prior art references only by order of the Court upon a showing of good cause and absence of unfair prejudice to opposing parties.

LPR 3.2 Final Non-infringement Contentions

Each party asserting non-infringement of a patent claim shall serve on all other parties "Final Non-infringement Contentions" no later than twenty-eight (28) days after service of the Final Infringement Contentions, containing the information called for in LPR 2.4(a).

LPR 3.3 Document Production Accompanying Final Invalidity Contentions

With the Final Invalidity Contentions, the party asserting invalidity of any patent claim shall produce or make available for inspection and copying: a copy or sample of all prior art identified pursuant to LPR 3.1, to the extent not previously produced, that does not appear in the file history of the patent(s) at issue. If any such item is not in English, an English translation of the portion(s) relied upon shall be produced. The translated portion of the non-English prior art must be sufficient to place in context the particular matter upon which the party relies.

The producing party shall separately identify by production number which documents correspond to each category.

LPR 3.4. Amendment of Final Contentions

A party may amend its Final Infringement Contentions; or Final Non-infringement, or Unenforceability and Invalidity Contentions only by order of the Court upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment. An example of a circumstance that may support a finding of good cause, absent undue prejudice to the non-moving party, includes a claim construction by the Court different from that proposed by the party seeking amendment.

The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

LPR 3.5 Final Date to Seek Stay

Absent exceptional circumstances, no party may file a motion to stay the lawsuit pending reexamination or other post-grant proceedings in the U.S. Patent Office after the due date for service of the Final Non-infringement Contentions pursuant to LPR 3.2.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1 Exchange of Proposed Claim Terms To Be Construed Along With Proposed Constructions

(a) No later than fourteen (14) days after service of the Final Contentions pursuant to LPR 3.1 and LPR 3.2, each party shall serve a list of (i) the claim terms and phrases the party contends the Court should construe; (ii) the party's proposed constructions; (iii) identification of any claim element that the party contends is governed by 35 U.S.C. § 112(f); and (iv) the party's description of the function of that element, and the structure(s), act(s), or material(s) corresponding to that element, identified by column and line number with respect to the asserted patent(s).

(b) No later than seven (7) days after the exchange of claim terms and phrases, the parties must meet and confer and agree upon no more than ten (10) terms or phrases to submit for construction by the court. No more than ten (10) terms or phrases may be presented to the Court for construction absent prior leave of court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon ten terms, then five shall be allocated to all plaintiffs and five to all defendants. For each term to be presented to the Court, the parties must certify whether a term construction in a party's favor would be dispositive of an issue and explain why.

Comment

In some cases, the parties may dispute the construction of more than ten terms. But because construction of outcome-determinative or otherwise significant claim terms may lead to settlement or entry of summary judgment, in the majority of cases the need to construe other claim terms of lesser importance may be obviated. The limitation to ten claim terms to be presented for construction is intended to require the parties to focus upon outcome-determinative or otherwise significant disputes.

LPR 4.2 Claim Construction Briefs

(a) No later than thirty-five (35) days after the exchange of terms set forth in LPR 4.1, the parties shall file simultaneous Cross-Motions for Claim Construction, which may not exceed twenty-five (25) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition.

(b) On the date for filing the Cross-Motions for Claim Construction, the parties shall file a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. The prosecution history must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing, and all parties must cite to the Joint Appendix when referencing the materials it contains. Any party may file a separate appendix to its claim construction brief containing other supporting materials. It must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing.

(c) No later than twenty-eight (28) days after filing of the Cross-Motions for Claim Construction, the parties shall file simultaneous Responsive Claim Construction Briefs, which may not exceed twenty-five (25) pages absent prior leave of Court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition. The brief shall also describe all objections to any extrinsic evidence identified in the Cross-Motions for Claim Construction.

(d) No reply or surreply briefs shall be filed unless requested by the Court.

(e) The presence of multiple alleged infringers with different products or processes shall, in an appropriate case, constitute good cause for allowing additional pages in the Cross-Motions for Claim Construction or Responsive Claim Construction Briefs or for allowing separate briefing as to different alleged infringers.

(f) No later than seven (7) days after filing of the Responsive Claim Construction Brief, the parties shall file (1) a joint claim construction chart that sets forth each claim term and phrase addressed in the claim construction briefs; each party's proposed construction, and (2) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing pursuant to LPR 4.3. The document shall also be submitted to the Court in Word Perfect or MS Word format. The chart should include a series of columns listing the complete language of each disputed claim term, each party's proposed claim constructions in separate columns, a column for the court to enter its claim construction and a reference to where the dispute term appears in the patent in suit. "Agreed" entered in the column for the court's construction will indicate agreed claim constructions.

Comment

The committee opted for simultaneous claim construction briefs rather than consecutive briefs, concluding that simultaneous briefing will allow all parties a better opportunity to explain their positions in the most expedient manner. Given the extensive disclosure required under these rules and the requirement to file the Joint Appendix

with the Cross-Motions for Claim Construction, the committee believed all parties would have an understanding of each other's positions prior to briefing.

LPR 4.3 Claim Construction Hearing

Concurrent with the filing of the Responsive Claim Construction Brief, a party shall file a Motion to Set Claim Construction Hearing. Either before or after the filing of claim construction briefs, the Court shall issue an order describing the schedule and procedures for a claim construction hearing. Any exhibits, including demonstrative exhibits, to be used at a claim construction hearing must be exchanged no later than seven (7) days before the hearing.

LPR 4.4 Tutorial

No later than fourteen (14) days after the filing of the Responsive Claim Construction Brief, a party may submit to the Court a tutorial summarizing and explaining the technology at issue either in writing or in presentation form such as PowerPoint not to exceed thirty (30) pages, or on DVD not to exceed thirty (30) minutes. The parties may request to provide a live tutorial to the court as part of its submission. No argument shall be permitted in the tutorial. The parties may not rely upon any statement made in the tutorial in other aspects of the litigation. If the Court considers an early claim construction in connection with a dispositive motion for summary judgment, a party may request or the Court may require the tutorial to be submitted at that time.

5. EXPERT WITNESSES

LPR 5.1 Disclosure of Experts and Expert Reports

Unless the Court orders otherwise,

- (a) expert witness disclosures and depositions shall be governed by this Rule;
- (b) no later than twenty-one (21) days after the claim construction ruling, each party shall make its initial expert witness disclosures required by Federal Rule of Civil Procedure 26 on issues for which it bears the burden of proof;
- (c) no later than thirty-five (35) days after the date for initial expert reports, each party shall make its rebuttal expert witness disclosures required by Federal Rule of Civil Procedure 26 on the issues for which the opposing party bears the burden of proof.
- (d) Expert Reports Generally:
 - (1) Every expert report shall begin with a succinct statement of the opinions the expert expects to give at trial.
 - (2) Unless leave of Court is applied for and given, there shall be no expert testimony at trial on behalf of the party having the burden of persuasion on any issue not fairly disclosed in that party's Initial Expert Report.
 - (3) Unless leave of Court is applied for and given, an expert shall not use or refer to at trial any evidence, basis or grounds in support of his/her opinion not disclosed in his/her expert report, except as set forth below.

LPR 5.2 Depositions of Experts

Depositions of expert witnesses shall be completed no later than thirty-five (35) days after exchange of expert rebuttal reports.

LPR 5.3 Presumption Against Supplementation of Reports

Amendments or supplementation to expert reports after the deadlines provided herein are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced. This rule does not preclude or excuse supplementation required by the Rules of Civil Procedure when there are changes in factual support or legal precedent necessitating such supplementation.

6. DISPOSITIVE MOTIONS

LPR 6.1 Final Day for Filing Dispositive Motions

All dispositive motions shall be filed no later than twenty-eight (28) days after the scheduled date for the end of expert discovery.

Comment

This Rule does not preclude a party from moving for summary judgment at an earlier stage of the case if circumstances warrant. It is up to the trial judge to determine whether to consider an “early” summary judgment motion. See also LPR 1.1 (judge may defer a motion raising claim construction issues until after claim construction hearing is held).

LPR 6.2 Summary Judgment

When construction of a term would be dispositive of an issue, any motion for partial summary judgment on that issue must be filed on a schedule that allows the motion to be briefed and heard at the same time as the hearing for claim construction. See LPR 4. The motion should be filed at the time the moving party files its claim construction brief. All other dispositive motions shall be filed within the time provided in LPR 6.1. All motions for summary judgment in patent cases subject to these rules must comply with local rule DUCivR 56-1.

7. FINAL PRETRIAL CONFERENCE

LPR 7.1 Number of Claims and Prior Art References to be Presented to the Fact Finder

The party asserting infringement shall reduce the number of asserted claims to a manageable number for trial. As a general rule, the Court considers a manageable number to be 3 claims per patent, and 10 claims total if more than one patent is being asserted. Except upon a showing of good cause, including principles of proportionality applying to the need for pretrial discovery, the party opposing infringement shall not file a motion to limit the number of asserted claims prior to the Pretrial Conference.

The party opposing infringement shall reduce the number of prior art references—and any

combinations thereof—to be asserted in support of anticipation or obviousness theories to be presented at trial. As a general rule, a manageable number of references per claim is no more than 3 references. The party opposing infringement must also identify how these references will be used, i.e., as anticipatory or in combination, against each asserted claim. Absent extraordinary circumstances, the party asserting infringement shall not file a motion to limit the number of asserted prior art references prior to the Pretrial Conference.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
DIVISION

Plaintiff,

v.

Defendant.

**PATENT CASE
SCHEDULING ORDER
AND ORDER VACATING HEARING**

Honorable District Judge

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report (doc # __) filed by counsel. The Court schedules the following matters. The parties may not modify the times and deadlines set forth herein without the approval of the Court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

This Court VACATES the Initial Pretrial Hearing set for _____, at
_____ a.m.

ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED UNLESS EXPRESSLY STATED TO THE CONTRARY

1.	PRELIMINARY MATTERS/DISCLOSURES	DATE
a.	Plaintiff's Accused Instrumentalities disclosure due [LPR 2.1]	[7 days after 1 st answer— Day 7/ Week 1]
b.	Plaintiff's Rule 26(a)(1) initial disclosure due [LPR 2.2]	[Day 21/ Week 3]
c.	Defendant's Rule 26(a)(1) initial disclosure due	[Day 28/

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

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|----|--|-----------------------|
| | [LPR 2.2] | Week 4] |
| d. | Rule 26(f)(1) Conference held and discovery begins
[LPR 1.2, 1.3] | [Day 35/
Week 5] |
| e. | Attorney Planning Meeting Form and Proposed
Scheduling Order submitted [LPR 1.2] | [Day 42/
Week 6] |
| f. | Plaintiff serves Initial Infringement Contentions [LPR
2.3] | [Day 63/
Week 9] |
| d. | Defendant serves Initial Non-Infringement,
Unenforceability, and Invalidity Contentions
<i>If no infringement claims</i> , Plaintiff serves Initial Non-
Infringement, Unenforceability, and Invalidity
Contentions [LPR 2.4, 2.6] | [Day 77/
Week 11] |
| e. | Final Infringement, Unenforceability, and Invalidity
Contentions [LPR 3.1] | [Day 210/
Week 30] |
| f. | Final Non- Infringement, Enforceability, and Validity
Contentions [LPR 3.2] | [Day 238/
Week 34] |

2. DISCOVERY LIMITATIONS **NUMBER**

- a. Maximum Number of Depositions² by Plaintiff(s)
- b. Maximum Number of Depositions³ by Defendant(s)
- c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties)
- d. Maximum Interrogatories⁴ by any Party to any Party
- e. Maximum requests for admissions by any Party to any
Party
- f. Maximum requests for production by any Party to any

² Excluding depositions of experts.

³ Excluding depositions of experts.

⁴ An interrogatory or multiple interrogatories seeking the basis of a party's affirmative defenses, infringement contentions, or invalidity contentions counts as one interrogatory regardless of the number of affirmative defenses alleged or the number of infringed or invalid claims alleged. A party may object to the time of discovery as set forth in LRP 1.7.

Party

- g. The Parties shall handle discovery of electronically stored information as follows:
- h. The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

	DATE
i. Deadline to serve written discovery before claim construction [R. 34] :	[Day 250]
j. Close of fact discovery before claim construction [LPR 1.3(a)]:	[Day 280/ Week 40]
k. Disclosure of intent to rely on opinions of counsel and materials in support [LPR 1.3(c)]:	[PCC Day 7/ Week 1]
l. Deadline file motion for additional discovery [LPR 1.3(b)]:	[PCC Day 14/ Week 2]

3. AMENDMENT OF PLEADINGS/ADDING PARTIES⁵ DATE

- a. Last Day to File Motion to Amend Pleadings [Day 112/
Week 16]
- b. Last Day to File Motion to Add Parties [Day 112/
Week 16]

4. CLAIM CONSTRUCTION PROCESS DATE

- a. Parties exchange proposed claim terms and claim constructions for construction [LPR 4.1(a)] [Day 252/
Week 36]
- b. Reach agreement to submit no more than 10 terms for construction [LPR 4.1(b)] [Day 259/
Week 37]
- c. Parties file Cross-Motions for Claim Construction and Joint Appendix [LPR 4.2(a) & (b)] [Day 287/
Week 41]

⁵ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

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|-----------|---|------------------------------------|
| d. | Parties file Simultaneous Responsive Claim Construction Briefs [LPR 4.2(c)] | [Day 315/
Week 45] |
| e. | Joint Claim Construction Chart & Joint Status Report Due [LPR 4.2(f)] | [Day 322/
Week 46] |
| f. | Tutorial for Court [LPR 4.4] | 2:30 p.m.
[Day 329/
Week 47] |
| g. | Parties exchange exhibits [LPR 4.3] | [Day 336/
Week 48] |
| h. | Claim Construction Hearing ⁶ [LPR 4.3] | [Day 343/
Week 49] |
| 5. | EXPERT DISCOVERY | DATE |
| a. | Parties bearing burden of proof [LPR 5.1(b)] | [PCC Day 21/
Week 3] |
| b. | Counter reports [LPR 5.1(c)] | [PCC Day 56/
Week 8] |
| c. | Close of expert discovery [LPR 5.2] | [PCC Day 91/
Week 13] |
| 6. | DISPOSITIVE MOTIONS | DATE |
| a. | Deadline to file dispositive motions required to be filed with claim construction [LPR 6.2] | [Day 287/
Week 41] |
| b. | Deadline to file opposition to dispositive motions filed with claim construction [LPR 6.2] | [Day 315/
Week 45] |
| c. | Deadline to file reply to dispositive motions filed with claim construction [LPR 6.2] | [Day 329/
Week 47] |
| d. | Deadline for filing dispositive or potentially dispositive motions [LPR 6.1] | [PCC Day
119/ Week 17] |

⁶ Parties should contact the Court to set the date for the Claim Construction Hearing

- e. Deadline for filing partial or complete motions to exclude expert testimony

7.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION/ OTHER PROCEEDINGS	DATE
a.	Referral to Court-Annexed Mediation:	Yes/No
b.	Referral to Court-Annexed Arbitration	Yes/No
c.	Last day to Seek Stay Pending Reexamination [LPR 3.5]	[Day 238/ Week 34]
d.	The parties will complete Private Mediation/Arbitration by:	00/00/00
e.	Evaluate case for Settlement/ADR on	00/00/00
f.	Settlement probability:	

Plaintiff is directed to file a new scheduling order within 14 days of ruling on claim construction. The Court will set trial deadlines in that order or through a case management conference.

8. OTHER MATTERS

Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Claim Construction motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Signed September 12, 2013.

BY THE COURT:

Evelyn J. Furse
U.S. Magistrate Judge