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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Click here to enter text.,
Plaintiff,
v.
Click here to enter text.,
Defendant.

No. Click here to enter text.

**ORDER SETTING RULE 16
SCHEDULING CONFERENCE
PATENT INFRINGEMENT
MARKMAN HEARING**

Pursuant to Federal Rule of Civil Procedure 16, a Scheduling Conference is set for
Click here to enter a date. at Click here to enter text. a.m./p.m., in Courtroom 506, Sandra
Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona
85003-2151. In preparation for this Scheduling Conference, it is ordered as follows:

INITIAL DISCLOSURES

**The parties are ordered to provide initial disclosures at least 21 calendar days
before the Scheduling Conference** in the form required by Federal Rule of Civil
Procedure 26(a)(1). The parties shall file with the Clerk of Court a Notice of Initial
Disclosure; copies of the actual disclosures need not be filed. The parties are not free,
without order of the Court, to delay or defer exchange of the Rule 26(a)(1) initial
disclosures to a time after their Rule 26(f) Meeting to prepare the proposed Discovery
Plan.

1 COMMENCEMENT OF DISCOVERY PERMITTED AND REQUIRED

2 The limitation on the commencement of formal discovery set forth in Federal Rule
3 of Civil Procedure 26(d) is waived. Formal discovery not only may commence at any
4 time after service of process, but the court expects discovery to commence prior to the
5 Scheduling Conference. The parties shall serve initial document discovery requests at
6 least 14 days before the Scheduling Conference.

7 CORPORATE DISCLOSURE STATEMENT

8 Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, any
9 nongovernmental corporate party to an action or proceeding must file a Corporate
10 Disclosure Statement. If not previously filed, the Court directs any nongovernmental
11 corporate party to file its Corporate Disclosure Statement within 10 days of receipt of this
12 Order. Forms are available on the Court's website.

13 RULE 26(f) MEETING AND DISCOVERY PLAN

14 The parties are directed to meet and confer at least 14 calendar days before the
15 Scheduling Conference as required by Federal Rule of Civil Procedure 26(f). At this
16 Rule 26(f) Meeting, the parties shall develop a joint proposed Discovery Plan which
17 contains the following information in separately numbered paragraphs:

- 18 1. The parties who attended the Rule 26(f) Meeting and assisted in developing
19 the Plan;
- 20 2. A short statement of the nature of the case (**3 pages or less**), including a
21 description of each claim and defense;
- 22 3. A description of the principal factual and legal disputes in the case;
- 23 4. The jurisdictional basis for the case, citing specific jurisdictional statutes;¹
- 24 5. Any parties which have not been served and an explanation of why they

25
26 ¹ If jurisdiction is based on diversity, the basis shall include a statement of the
27 citizenship of every party. *See* 28 U.S.C. § 1332. The parties are reminded that (1) a
28 corporation is a citizen of the state where it is incorporated and the state of its principal
place of business and (2) partnerships and limited liability companies are citizens of
every state of which one of their members or partners is a citizen. *See* 28 U.S.C. §
1332(c); *Indus. Tectonics v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990); *Belleville*
Catering Co. v. Champaign Market Place, L.L.C., 350 F.3d 691, 692 (7th Cir. 2003).

1 have not been served; and any parties which have been served but have not answered or
2 otherwise appeared;

3 6. A statement of whether any party expects to add additional parties to the
4 case or otherwise to amend pleadings;

5 7. A listing of contemplated motions and a statement of the issues to be
6 decided by these motions (including motions under Federal Rules of Evidence 702, 703,
7 704, and 705);

8 8. Whether the case is suitable for reference to arbitration or a United States
9 Magistrate Judge for trial;

10 9. The status of related cases pending before other courts or other judges of
11 this Court;

12 10. A statement of when the parties exchanged Federal Rule of Procedure 26(a)
13 initial disclosures;

14 11. The prospects for settlement, including any request of the Court for
15 assistance in settlement efforts;

16 12. Any other matters that will aid the Court and parties in resolving this case
17 in a just, speedy, and inexpensive manner as required by Federal Rule of Civil Procedure;
18 and

19 13. Agreed upon deadlines for the following:

20 A. A deadline for Plaintiff to serve its initial claims and infringement
21 contentions, which shall be no later than 10 days after the scheduling conference.

22 B. A deadline for Defendant to serve its initial non-infringement and
23 invalidity contentions, which shall be no later than 45 days after Plaintiff's disclosure of
24 asserted claims.

25 C. A deadline for identification of claims to be construed, which shall be
26 no later than 10 days after Defendant serves its non-infringement and invalidity
27 contentions.

28 D. A deadline for filing claim constructions, which shall be no later than

1 20 days after the filing of the claims to be construed.

2 E. A deadline for filing the joint claim-construction statement, which
3 shall be no later than 60 days after the filing of the invalidity contentions.

4 F. A deadline for claim-construction discovery to close, which shall be no
5 later than 30 days after the deadline for the filing of the joint claim-construction
6 statement.

7 G. A deadline for filing the opening claim-construction brief, which shall
8 be no later than 45 days after the deadline for filing the joint claim-construction
9 statement.

10 H. A deadline for filing the responsive claim-construction brief, which
11 shall be no later than 14 days after the deadline for filing the opening claim-construction
12 brief.

13 I. A deadline for filing the reply claim construction brief, which shall be no
14 later than 7 days after the deadline for filing the responsive claim-construction brief.

15 A *Markman* hearing shall be set by the court at the Scheduling Conference to
16 occur within 14 days of the deadline for filing the reply claim-construction brief.

17 J. A deadline for the completion of fact discovery² and disclosure pursuant
18 to Rule 26(a)(3).

19 K. Dates for complete disclosures of expert testimony under Rule
20 26(a)(2)(C) of the Federal Rules of Civil Procedure;³

21 L. A deadline for completion of all expert depositions;

22
23 ² The discovery deadline is the date by which all discovery must be completed.
24 Discovery requests must be served and depositions noticed sufficiently in advance of this
25 date to ensure reasonable completion by this deadline, including time to resolve discovery
disputes. Absent extraordinary circumstances, the Court will not entertain discovery
disputes after this deadline.

26 ³ No expert witness not timely disclosed will be permitted to testify unless the
27 party offering such witness demonstrates: (a) that the necessity of such expert witness
28 could not have been reasonably anticipated at the time of the deadline for disclosing such
expert witness; (b) the Court and opposing counsel or unrepresented party were promptly
notified upon discovery of such expert witness; and (c) that such expert witness was
promptly proffered for deposition. *See Wong v. Regents of the Univ. of Cal.*, 410 F.3d
1052, 1060 (9th Cir. 2005).

- 1 M. A deadline for filing dispositive motions;
- 2 N. A date by which the parties shall have engaged in good faith
- 3 settlement talks.

4 The parties shall jointly file the Plan with the Clerk (e-file the Plan using the Other
5 Documents category and use the drop down event Report re: Rule 26(f) Planning
6 Meeting) not less than 7 calendar days before the Scheduling Conference (absent
7 extraordinary circumstances, no extensions of time will be granted). It is the
8 responsibility of Plaintiff(s) to initiate the Rule 26(f) Meeting and preparation of the joint
9 Plan. Defendant(s) shall promptly and cooperatively participate in the Rule 26(f)
10 Meeting and assist in preparation of the proposed plan.

11 SCHEDULING CONFERENCE AND ORDER

12 The Court directs counsel to Federal Rule of Civil Procedure 16 for the objectives
13 of the Scheduling Conference. Counsel who will be responsible for trial of the lawsuit
14 for each party shall appear and participate in the Scheduling Conference and shall have
15 authority to enter into stipulations regarding all matters that may be discussed. A
16 continuance of the Scheduling Conference will be granted only for good cause and will
17 not be granted beyond the time limit set forth in Federal Rule of Civil Procedure Rule
18 16(b).

19 During or after the Scheduling Conference, the Court will enter a Scheduling
20 Order. The form of the Court's standard Scheduling Order can be found on the Court's
21 website at www.azd.uscourts.gov under Judges & Courtrooms; Orders, Forms &
22 Procedures; Judge Rayes. The Court fully intends to enforce the deadlines in the
23 Scheduling Order. The parties should plan their litigation activities accordingly.

24 OTHER MATTERS

25 Counsel for all parties are expected to comply fully with the Federal Rules of Civil
26 Procedure and Local Rules and to minimize the expense of discovery.

27 Counsel should ensure that all pleadings comply with LRCiv 7.1 and LRCiv 7.2.

28 Unless counsel can otherwise show cause, an order shall accompany the Discovery

1 Plan dismissing any party which has not been served, fictitious or unnamed parties, or
2 seeking default judgment against any non-appearing party.

3 **If a party has been served, but has not appeared, plaintiff or counter-**
4 **claimant shall give notice of this order to that party. Fed. R. Civ. P. 16(b)(2).**

5 The parties shall not file written discovery motions without leave of court. If a
6 discovery dispute arises and cannot be resolved despite sincere efforts to resolve the
7 matter through personal consultation, the parties shall call the Court's Judicial Assistant,
8 Ms. Mary Farmer, at (602) 322-7530, to set a telephonic conference.

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