

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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.

**SCHEDULING ORDER
PATENT INFRINGEMENT
MARKMAN HEARING**

On [Click here to enter a date.](#), the Court held a Scheduling Conference pursuant to Federal Rule of Civil Procedure 16(b). The parties met before the conference in accordance with Rule 26(f) and prepared a Discovery Plan. On the basis of the Scheduling Conference and the Discovery Plan,

IT IS ORDERED:

1. Deadline for Initial Disclosures. Initial disclosures required by Federal Rule of Civil Procedure 26(a) have already been exchanged by the parties.
2. Deadline for Joining Parties, and Amending Pleadings. The deadline for joining parties and amending pleadings is [Click here to enter a date.](#)
3. Deadline for Disclosure of Asserted Claims and Infringement Contentions. The deadline for Plaintiff to serve its initial claims and infringement contentions is _____, 10 days after this Scheduling Conference.
4. Deadline for Invalidity Contentions. The deadline for Defendant to serve its

1 initial non-infringement and invalidity contentions is _____, 45 days after
2 Plaintiff's disclosure of asserted claims.

3 5. Deadline for Identification of Claims to be Construed. The deadline for
4 identification of claims to be construed is _____, 10 days after Defendant
5 serves its non-infringement and invalidity contentions.

6 6. Deadline for Claim Constructions. The deadline for filing claim
7 constructions is _____, 20 days after the filing of the claims to be construed.

8 7. Deadline for Joint Claim-Construction Statement. The deadline for filing the
9 joint claim-construction statement is _____, 60 days after the filing of the
10 invalidity contentions.

11 8. Deadline for Claim-Construction Discovery. Claim-construction discovery
12 shall close on _____, 30 days after the deadline for the filing of the joint
13 claim-construction statement.

14 9. Deadline for Filing Opening Claim-Construction Brief. The deadline for filing
15 the opening claim-construction brief is _____, 45 days after the deadline for
16 filing the joint claim-construction statement.

17 10. Deadline for Filing Responsive Claim-Construction Brief. The deadline for
18 filing the responsive claim-construction brief is _____, 14 days after the
19 deadline for filing the opening claim-construction brief.

20 11. Deadline for Filing the Reply Claim-Construction Brief. The deadline for
21 filing the reply claim construction brief is _____, 7 days after the deadline for
22 filing the responsive claim-construction brief.

23 12. Markman Hearing. The *Markman* hearing shall take place within 14 days of
24 the deadline for filing the reply claim-construction brief.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that a *Markman* Hearing is scheduled for _____, at _____ a.m./p.m. Copies of any exhibits the parties intend to present at the hearing must be hand-delivered to chambers on or before _____. To assist the court reporter, the parties shall prepare and bring to the hearing a Table of Authorities, in alphabetical order, which includes all of the authorities on which the parties will rely at the hearing.

13. Discovery Limitations. Depositions in this case shall be limited to seven hours each as provided in Rule 30(d)(1) of the Federal Rules of Civil Procedure. The number of depositions and interrogatories shall be as limited in Rules 30(a), 31(a), and 33(a)(1) of the Federal Rules of Civil Procedure. Each side also may propound up to 40 requests for production of documents, including subparts, and up to 40 requests for admissions, including subparts. The limitations set forth in this paragraph may be increased by mutual agreement of the parties, but such an increase will not result in an extension of the discovery deadlines set forth below.

14. Deadline for Completion of Fact Discovery. The deadline for completing fact discovery, including all disclosure required under Rule 26(a)(3), shall be _____. To ensure compliance with this deadline, the following rules shall apply:

a. Depositions: All depositions shall be scheduled to commence at least five working days prior to the discovery deadline. A deposition commenced five days prior to the deadline may continue up until the deadline, as necessary.

b. Written Discovery: All interrogatories, requests for production of documents, and requests for admissions shall be served at least 45 days before the discovery deadline.

c. Notwithstanding LRCiv 7.3, the parties may mutually agree in writing, without court approval, to extend the time provided for discovery responses in Rules 33, 34, and 36 of the Federal Rules of Civil Procedure. Such agreed-upon

1 extensions, however, shall not alter or extend the discovery deadlines set forth in this
2 order.

3 d. Special Provisions Regarding Rule 34 Responses: Objections to
4 Rule 34 document production requests shall be stated with specificity; general or
5 boilerplate objections are not permitted. Document production in response to a Rule 34
6 request must be completed no later than the time specified in the request or another
7 reasonable time specified in the response. An objection to a Rule 34 request must state
8 whether any responsive materials have been withheld on the basis of that objection.

9 15. Deadlines for Disclosure of Experts and Completion of Expert Discovery.

10 a. The Plaintiff(s) shall provide full and complete expert disclosures as
11 required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than
12 _____.

13 b. The Defendant(s) shall provide full and complete expert disclosures as
14 required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than
15 _____.

16 c. Plaintiff's rebuttal expert disclosures, if any, shall be made no later
17 than _____. Rebuttal experts shall be limited to responding to opinions stated
18 by initial experts.

19 d. Expert depositions shall be completed no later than _____.
20 As with fact witness depositions, expert depositions shall be scheduled to commence at
21 least five working days before the deadline.

22 e. No expert witness not timely disclosed will be permitted to testify
23 unless the party offering such witness demonstrates: (a) that the necessity of such expert
24 witness could not have been reasonably anticipated at the time of the deadline for
25 disclosing such expert witness; (b) the opposing counsel or unrepresented party were
26 promptly notified upon discovery of such expert witness; and (c) that such expert witness
27

28

1 was promptly proffered for deposition. *See Wong v. Regents of the Univ. of Cal.*, 410
2 F.3d 1052, 1060 (9th Cir. 2005).

3 16. Interim Scheduling Conference. After completion of expert depositions, the
4 parties shall appear telephonically for an interim scheduling conference on
5 _____ . Counsel for ****Plaintiff/Defendant**** shall make the necessary
6 arrangements for the conference call. All parties participating in the conference call shall
7 do so via a landline only. The use of cellular phones will not be permitted.

8 17. Discovery Disputes.

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

13 b. If a discovery dispute arises in the course of a deposition and
14 requires an immediate ruling of the Court, the parties shall jointly telephone the Court to
15 request a telephone conference regarding the dispute.

16 c. Absent extraordinary circumstances, the court will not entertain fact
17 discovery disputes after the deadline for completion of fact discovery and will not
18 entertain expert discovery disputes after the deadline for completion of expert discovery.
19 Delay in presenting discovery disputes for resolution is not a basis for extending
20 discovery deadlines.

21 18. Deadline for Filing Dispositive Motions.

22 a. Dispositive motions and motions challenging expert opinion
23 testimony shall be filed no later than _____ at 5:00 p.m. Arizona time. Such
24 motions must comply in all respects with the Federal Rules of Civil Procedure and the
25 Local Rules.

26 b. No party or parties represented by the same counsel shall file more
27 than one motion for summary judgment under Rule 56 of the Federal Rules of Civil
28

1 Procedure unless by leave of the Court.

2 c. Statements of fact required by Local Rule of Civil Procedure 56.1
3 shall not exceed ten pages in length, exclusive of exhibits.

4 d. Failure to respond to a motion within the time periods provided in
5 LRCiv 7.2 will be deemed a consent to the denial or granting of the motion and the Court
6 may dispose of the motion summarily pursuant to LRCiv 7.2(i).

7 e. A party desiring oral argument shall place the words "Oral
8 Argument Requested" immediately below the title of the motion pursuant to LRCiv
9 7.2(f). The court will issue a minute entry order scheduling oral argument as it deems
10 appropriate.

11 19. Deadline for Engaging in Good Faith Settlement Talks. All parties and
12 their counsel shall meet in person and engage in good faith settlement talks no later than
13 _____. Upon completion of such settlement talks, and in no event later than
14 five working days after the deadline set forth in the preceding sentence, the parties shall
15 file with the court a joint Report on Settlement Talks executed by or on behalf of all
16 counsel. The report shall inform the Court that good faith settlement talks have been held
17 and shall report on the outcome of such talks. The parties shall promptly notify the Court
18 at any time when settlement is reached during the course of this litigation.

19 The Court will set a settlement conference before a magistrate judge upon request
20 of all parties.

21 The parties are encouraged to discuss settlement at all times during the pendency
22 of the litigation. The Court will not, however, extend the case processing deadlines
23 because the parties wish to avoid litigation expense if and when they elect to pursue
24 settlement efforts, including a settlement conference before a magistrate judge. The
25 parties should plan their settlement efforts accordingly.

26 20. The Deadlines Are Real. The parties are advised that the Court intends to
27 enforce the deadlines set forth in this order, and they should plan their litigation activities
28

1 accordingly. The Court will not extend the case processing deadlines because the parties
2 wish to avoid litigation expense if and when they elect to pursue settlement efforts,
3 including a settlement conference before a magistrate judge.

4 21. Briefing Requirements.

5 a. All memoranda filed with the Court shall comply with Local Rule of
6 Civil Procedure 7.1(b) requiring 13 point font in text and footnotes.

7 b. Citations in support of any assertion in the text shall be included in
8 the text, not in footnotes.

9 22. Dismissal for Failure to Meet Deadlines of This Order or of the Rules.

10 The parties are warned that failure to meet any of the deadlines in this order or in the
11 Federal Rules of Civil Procedure without substantial justification may result in sanctions,
12 **including dismissal of the action or entry of default.**

13 23. Requirement for Paper Courtesy Copies. Pursuant to Section II.D.3 of the
14 Electronic Case Filing Administrative Policies and Procedures Manual, a paper courtesy
15 copy of dispositive motions and responses and replies thereto and any document
16 exceeding 10 pages in length shall be either post-marked and mailed directly to the judge
17 or hand-delivered to the judge's mail box located in the courthouse the next business day
18 after the electronic filing. A copy of the face page of the Notice of Electronic Filing shall
19 be appended to the last page of the courtesy copy. Courtesy copies of documents too
20 large for stapling must be bound with a metal prong fastener at the top center of the
21 document or submitted in three-ring binders. If courtesy copies are not delivered within
22 three days of the file date, the court may strike the pleading summarily for failure to
23 follow court rules and this order.