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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

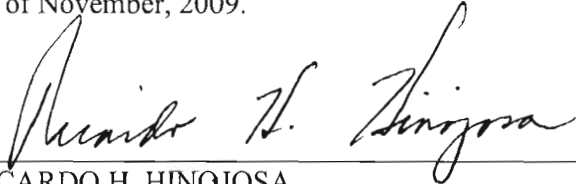
Clerk of Court
By Deputy Clerk Thonda Hawkins

IN RE: §
§
ADOPTION OF AMENDMENTS TO § GENERAL ORDER NO. 2009 - 17
LOCAL RULES OF PROCEDURE §

ORDER

The Court earlier proposed amending the Local Rules of Procedure for the District Court to make them consistent with the new statutory and federal rules time computation changes effective December 1, 2009. The proposed amendments having now been approved by the Judicial Council of the Fifth Circuit through its Rules Committee, the Court adopts the attached amendments to the Local Rules of Procedure for the District Court, effective December 1, 2009.

Signed at McAllen, Texas this 16th day of November, 2009.



RICARDO H. HINOJOSA
CHIEF JUDGE

PROPOSED AMENDMENTS

RENUMBERED LOCAL RULES

CIVIL RULES

LR7. CIVIL PRETRIAL MOTION PRACTICE

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LR7.3 **Submission.** Opposed motions will be submitted to the judge ~~twenty~~ 21 days from filing without notice from the clerk and without appearance by counsel.

LR16. CIVIL PRETRIAL PROCEEDINGS

* * * * *

LR16.4. **Alternative Dispute Resolution.** Pursuant to 28 U.S.C. § 652 (1998) and to facilitate the settlement or narrowing of issues in civil actions, the Court adopts the following Alternative Dispute Resolution Program:

* * * * *

16.4.D. **Opposition to ADR Referral, ADR Method or ADR Provider.** A party opposing in a particular case either the ADR referral, ADR method, or the appointed ADR provider must file written objections within ~~ten~~ 14 days of entry of the order for ADR, and must explain the reasons for any opposition. The objections and related submissions shall be filed with the judge presiding over the case.

* * * * *

16.4.K. **Conclusion of ADR Proceedings.** After each ADR proceeding the provider, the parties, and the Court will take the following actions:

- (1) Within ~~10~~ 14 days of completion of the proceeding, the parties jointly shall send to the ADR Administrator a memorandum stating the style and civil action number of the case; the names, addresses, and telephone numbers of counsel and party representatives in attendance; the type of case; the ADR method used; whether the case settled; and the fees paid to the ADR provider. A copy of this memorandum shall also be sent to the judge presiding over the case. This reporting provision does not apply to non-binding arbitrations conducted pursuant to 28 U.S.C. § 654.
- (2) Within ~~10~~ 14 days of completion of the proceeding, the ADR provider shall send a report to the ADR Administrator and the judge presiding over the case disclosing only the information listed in

subparagraph K.(1).

* * * * *

LR44. PROOF OF OFFICIAL RECORD

LR44.1. **Authentication of Exhibits.** A party requiring authentication of an exhibit must notify the offering party in writing within ~~five~~ 7 days after the exhibit is listed and made available. Failure to object in advance of the trial in writing concedes authenticity.

LR46. OBJECTIONS TO EXHIBITS

Objections to admissibility of exhibits must be made at least ~~three business~~ 7 days before trial by notifying the Court in writing of the disputes, with copies of the disputed exhibit and authority.

LR54. COSTS

* * * * *

LR54.2. **Bill of Costs.** The parties must maintain their own record of taxable costs. The clerk does not record taxable costs. An application for costs shall be made by filing a bill of costs within 14 days of the entry of a final judgment. When attorney's fees are taxable as costs, an application for them must be made with the application for other costs. Objections to allowance of the bill, the attorney's fees, or both must be filed within ~~five~~ 7 days of the bill's filing. Rule 54(d). 28 U.S.C. § 1920.

LR79. BOOKS AND RECORDS KEPT BY THE CLERK

* * * * *

LR79.2. Disposition of Exhibits.

- A. Exhibits that are not easily stored in a file folder (like posters, parts, or models) must be withdrawn within ~~two business~~ 7 days after the completion of the trial and reduced reproductions or photographs substituted.
- B. If there is no appeal, exhibits will be removed by the offering party within thirty days after disposition of the case. When there is an appeal, exhibits returned by the court of appeals will be removed by the offering party within ~~ten~~ 14 days after written notice from the clerk. Exhibits not removed will be disposed of by the clerk, and the expenses incurred will be taxed against the offering party.

SUPPLEMENTAL ADMIRALTY RULES

E. **ADMIRALTY SALES** - In the absence of conflicting requirements in the order of sale, these are the procedures for sales of property under marshal's seizure in admiralty actions:

* * * * *

E.2. **Payment.**

* * * * *

C. For accepted bids of \$1,000 and more, the higher of ten percent of the bid or \$1,000 shall be deposited immediately and be paid in full within ~~three~~ **business** 7 days of the sale. If an objection is filed within the ~~three~~ **7** days, the buyer may defer payment of the balance until the sale is confirmed.

* * * * *

E.4. **Objections.**

E.4.1. **Time.** Objections must be written and filed with the marshal within ~~three~~ **business** 7 days of the sale date.

* * * * *

CRIMINAL RULES

CrLR32. SENTENCING PROCEDURES

* * * * *

CrLR32.3. **Presence of Counsel.** On request, defense counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

- A. A request to be present at interviews conducted by the probation officer must be made to the probation office immediately after the determination of guilt, followed by written notice to the probation office within ~~5~~ 7 days.

* * * * *

CrLR55. RECORDS

* * * * *

CrLR55.2. Exhibits at Criminal Trials.

- A. ***Authentication of Exhibits.*** A party requiring authentication of an exhibit must notify the offering party in writing within ~~five~~ 7 days after the exhibit is listed and made available. Failure to object in advance of the trial in writing concedes authenticity.

- B. ***Objections to Exhibits.*** Objections to admissibility of exhibits must be made at least ~~three-business~~ 7 days before trial by notifying the Court in writing of the disputes, with copies of the disputed exhibit and authority.

- C. ***Disposition of Exhibits.***
 - (1) Exhibits that are not easily stored in a file folder (like posters, parts, or models) must be withdrawn within ~~two-business~~ 7 days after the completion of the trial and reduced reproductions or photographs substituted.

 - (2) If there is no appeal, exhibits will be removed by the offering party within thirty days after disposition of the case. When there is an appeal, exhibits returned by the court of appeals will be removed by the offering party within ~~ten~~ 14 days after written notice from the clerk. Exhibits not removed will be disposed of by the clerk, and the expenses incurred will be taxed against the offering party.

* * * * *

APPENDIX A

RULES OF DISCIPLINE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(Effective June 19, 2007)

Rule 5. *Charges of Misconduct Warranting Discipline.*

* * * * *

- G. The decision of the hearing judge is final, except that, within ~~10~~ 14 days, the lawyer may appeal the judgment by filing a notice of appeal. A panel of three district judges of the court, randomly assigned, will hear the appeal. The appeal shall be on the record developed at the hearing. Facts found by the hearing judge are not reviewable unless clearly erroneous. The law determined by the hearing judge is reviewable de novo. The decision of the panel is final. There is no en banc review.

* * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

_____	,	§	
	Plaintiffs	§	
vs.		§	CIVIL ACTION NO.
		§	
_____	,	§	
	Defendants	§	

JOINT PRETRIAL ORDER

1. APPEARANCE OF COUNSEL

List each party, its counsel, and counsel's address and telephone number in separate paragraphs.

2. STATEMENT OF THE CASE

Give a brief statement of the case, one that the judge could read to the jury panel for an introduction to the facts and parties; include names, dates, and places.

3. JURISDICTION

Briefly specify the jurisdiction of the subject matter and the parties. If there is an unresolved jurisdictional question, state it.

4. MOTIONS

List pending motions.

5. CONTENTIONS OF THE PARTIES

State concisely in separate paragraphs each party's claims.

6. ADMISSIONS OF FACT

List all facts that require no proof.

7. CONTESTED ISSUES OF FACT

List all material facts in controversy.

8. AGREED PROPOSITIONS OF LAW

List the legal propositions that are not in dispute.

9. CONTESTED PROPOSITIONS OF LAW

State briefly the unresolved questions of law, with authorities to support each.

10. EXHIBITS

- A. On a form similar to the one provided by the clerk, each party will attach two lists of all exhibits expected to be offered and will make the exhibits available for examination by opposing counsel. All documentary exhibits must be exchanged before trial, except for rebuttal exhibits or those whose use cannot be anticipated.
- B. A party requiring authentication of an exhibit must notify the offering counsel in writing within ~~five (5)~~ 7 days after the exhibit is listed and made available; failure to object in advance of the trial in writing concedes authenticity.
- C. Within reason, other objections to admissibility of exhibits must be made at least ~~three business~~ 7 days before trial; the Court will be notified in writing of disputes, with copies of the disputed exhibit and authority.
- D. Parties must mark their exhibits to include the date and case number on each.
- E. At the trial, the first step will be the offer and receipt in evidence of exhibits.

11. WITNESSES

- A. List the names and addresses of witnesses who may be called with a brief statement of the nature of their testimony. Include the qualifications of expert witnesses; these will be used to qualify the expert at trial.
- B. Include:

"If other witnesses to be called at the trial become known, their names, addresses, and subject of their testimony will be reported to opposing counsel in writing as soon as they are known; this does not apply to rebuttal or impeachment witnesses."

12. SETTLEMENT

State that all settlement efforts have been exhausted, that the case cannot be settled, and that it will have to be tried.

13. TRIAL

- A. Probable length of trial; and

- B. Logistical problems, including availability of witnesses, out-of-state people, bulky exhibits, and demonstrations.

14. ATTACHMENTS

Include these required attachments:

- A. For a jury trial:

- (1) Proposed questions for the voir dire examination.
- (2) Proposed charge, including instructions, definitions, and special interrogatories, with authority.

- B. For a nonjury trial:

- (1) Proposed findings of fact (without repeating uncontested facts) and
- (2) Conclusions of law, with authority.

Date: _____ UNITED STATES DISTRICT JUDGE

Approved:

Date: _____ Attorney-in-Charge, Plaintiff

Date: _____ Attorney-in-Charge, Defendant



PROPOSED AMENDMENTS

RULES OF PRACTICE FOR PATENT CASES IN THE SOUTHERN DISTRICT OF TEXAS

2. GENERAL PROVISIONS

2-1. Procedure.

* * * * *

(b) **Insufficient Information.** If warranted by the patent(s) and/or products in issue, the party claiming patent infringement (“claimant”) may include in the Joint Case Management Report a statement that the claimant in good faith lacks sufficient information concerning the opponent’s products or processes to provide the necessary specificity for the Preliminary Infringement Contentions (*see* P.R. 3-1). If the presiding judge orders, the opponent within ~~twenty~~ 21 days must produce to the claimant sufficient information concerning each product or process of the type or class specified by the claimant in its statement to enable the claimant to determine whether to claim that the product or process infringes. Neither the claimant’s statement nor the opponent’s production will be an admission or evidence of infringement or noninfringement. These steps are solely to determine what is alleged to be infringing.

* * * * *



PROPOSED AMENDMENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____,
Plaintiff,
v. _____,
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NO. H-_____

**ORDER SETTING SCHEDULING CONFERENCE,
PROPOSED SCHEDULING ORDER,
SCOPE OF PERMISSIBLE DISCOVERY AND
DIRECTIVE TO CONFER IN PATENT CASES**

The Court issues this Order in preparation for the _____, 200_, Initial Case Management Conference in this patent infringement case. The following are hereby **ORDERED**.

PROPOSED DATES FOR SCHEDULING ORDER

Proposed dates for the Scheduling Order in this case will be discussed at the conference. The parties are directed to meet and confer in accordance with FED. R. CIV. P. 26(f) and Rule 2-1 of the Rules of Practice for Patent Cases in the Houston Division of the Southern District of Texas (“P.R.”, available at United States District Court for the Southern District of Texas Court website www.txs.uscourts.gov) no later than ~~ten (10)~~ **14 days** before the conference. The parties must file no later than ~~five (5) business~~ **7 days** before the conference a “Joint Case Management Plan” setting forth the information required in P.R. 2-1 and, in brief, their disagreements, if any, on the schedule and procedures to govern this case. The parties also must submit with the Plan a draft Scheduling Order using the template for patent cases on the District’s website.

DISCOVERY ORDER

At the Scheduling Conference, the parties may make requests and/or suggestions to the Court regarding discovery. In the interim, after a review of the pleaded claims and defenses in this action and in furtherance of the management of the Court's docket under FED. R. CIV. P. 16, the Court issues the following **DISCOVERY ORDER**:

1. **Disclosures.** In conjunction with disclosures under FED. R. CIV. P. 26(a), and without awaiting a discovery request, each party must disclose to every other party the following information:

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
- (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by such person;
- (e) any indemnity and insuring agreements under which any person or entity may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
- (f) any settlement agreements relevant to the subject matter of this action;
- (g) any statement of any party to the litigation;

2. **Additional Disclosures.**

- (a) Each party must provide to every other party the following information:
 - (i) the disclosures required by the Court's Patent Rules in accordance with the deadlines set forth in said rules;
 - (ii) to the extent that any party pleads a claim for relief or defensive matter other than those addressed in the Patent Rules, within forty-five (45) days after the Scheduling Conference or the date the Scheduling Order is issued by the Court, and without awaiting a discovery request, a copy of all documents,

data compilations and tangible things in the possession, custody, or control of the party that are relevant to those additionally pleaded claims or defenses involved in this action; and

- (iii) within forty-five (45) days after the production of information under P.R. 3-4(c), a complete computation of any category of damages claimed by any party to the action, making available for inspection and copying, the documents or other evidentiary materials on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and authorizations necessary to obtain from third parties documents on which the calculations are founded.
 - (b) If feasible, counsel must meet to exchange these and any other disclosures required by this Order; otherwise, such disclosures must be served as provided by FED. R. CIV. P. 5.
 - (c) By written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials.
 - (d) **Notification of the Court.** The parties must promptly file a notice with the Court that the disclosures required under this order have taken place, but no detail is required.
3. **Testifying Experts.** By the date(s) provided in the Scheduling Order, in addition to the information provided in the Patent Rules, each party shall disclose to the other parties for each testifying expert:
- (a) the expert's name, address, and telephone number;
 - (b) the subject matter on which the expert will testify;
 - (c) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the disclosing party, documents reflecting information such as:
 - (i) whether the expert is retained by, employed by, or otherwise subject to the control of the disclosing party;

- (ii) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (iii) the expert's current resume and bibliography.
- 4. **Discovery Limitations.** Discovery is limited in this case to the disclosures described in Paragraphs 1 - 3 together with 60 interrogatories; 60 requests for admissions; a reasonable number of requests for production or inspection not duplicative of the Patent Rules disclosures; depositions of the parties; depositions on written questions of custodians of business records for third parties; and depositions of three expert witnesses per side. "Side" means a party or a group of parties with a common interest. If parties seek depositions of third-party witnesses or additional experts, the parties either must agree or raise the issue with the Court.
- 5. **Privileged Information.** There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Scheduling Conference.
 - (a) By the date provided in the Scheduling Order, the parties must exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.
 - (b) If the parties have no disputes concerning privileged documents or information, then the parties must inform the Court of that fact by the date provided in the Scheduling Order.
 - (c) A party may move the Court for an order compelling the production of any privileged documents or information identified on any other party's privilege log. If such a motion is made, the party asserting the privilege must file with the Court within thirty (30) days of the filing of the motion to compel proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection.
- 6. **Pretrial Order and Accompanying Disclosures.** By the date provided in the Scheduling Order, each party must provide to every other party the materials and disclosures regarding the evidence that the disclosing party intends to present at trial as required by the form Pretrial Order (Appendix B to the Local Rules of the Southern District of Texas), which information must include but not be limited to the following:
 - (a) Witness Lists: The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.

- (b) **Deposition Designations:** The designation of those witnesses whose testimony is expected to be presented by means of a deposition, with designations to the transcripts.
 - (c) **Exhibit Lists and Copies:** All exhibits must be pre-marked separately identifying those which the party expects to offer in its case in chief and those which the party may offer if the need arises.
 - (d) **Objections, together with the grounds therefor, to live witnesses and deposition designations by another party under subparagraph (b) above.** Objections not so disclosed are deemed waived unless excused by the Court for good cause shown.
 - (e) **Objections, together with the grounds therefor, to authentication and/or admissibility of exhibits identified under subparagraph (c) above.** Objections not so disclosed are deemed waived unless excused by the Court for good cause shown.
 - (f) **Legal Memoranda and Related Material:**
 - (i) **Bench trials:** proposed findings of fact and conclusions of law with citation to authority;
 - (ii) **Jury trials:** joint proposed jury instructions with citation to authority, and proposed verdict form.
7. **Signatures.** The disclosures required by this Order must be made electronically or in writing and signed by the party making the disclosures. **NOTE:** Signatures by the party or counsel constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made.
8. **Protective Orders.** The parties may submit a proposed protective order, preferably using the form Protective Order for use in patent cases (available at the District's website), to ensure the confidentiality of parties' materials is maintained during this case to the extent feasible. To propose modifications to the form, *see* P.R. 2-2.
9. **Rules of Practice.** The Federal Rules of Civil Procedure, the District's Local Rules, and the District's Local Patent Rules apply in this case, unless otherwise ordered. The District Local Rules and the Local Patent Rules are available at the District's website.
10. **Discovery Disputes.** Counsel are directed to adhere to procedures of the presiding judge for bringing discovery disputes to the Court's attention.
11. **No Excuses.** A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure

because there are pending motions to dismiss, to remand or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit disclosure to those materials necessary to decide the issue of qualified immunity.

12. **E-Filing.** Except for good cause shown or as provided in the Local Rules, all documents (with the exception of correspondence and those documents referenced in the District's Local Rules) in cases pending in this Court must be filed electronically.¹ The file in each case is maintained electronically. Neither the Clerk's Office nor the Court will maintain a paper file except as provided in the District's Local Rules.

When filing electronically, the Court prefers:

- (a) that documents be published to *PDF* and then filed with the Court, rather than filing scanned documents; and
 - (b) proposed orders be included as attachments to motions, not incorporated within the filed motion and not filed as a separate docket entry.
13. **Duty to Supplement.** After disclosure is made pursuant to this Order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.
14. **Courtesy Paper Copies.** The parties must comply with the presiding judge's procedures for courtesy copies.
15. **Hearing Notebooks.** Unless a different time or method is provided by the presiding judge or in the Scheduling Order in this case, the movant is to provide the Court, no later than ~~ten~~ 14 days before any motion hearing, an original and one copy of a hearing notebook containing all motion papers with the corresponding docket numbers on each and all pleadings and exhibits appropriately tabbed.
16. **Sealed Documents.**

~~(a)~~ The filing of sealed documents is disfavored. ~~However,~~ The Court will accommodate parties' desire to seal documents if the materials being filed are not seal a document unless the movant shows the document contains genuinely confidential or proprietary material, and otherwise meets the requirements for sealing filed documents.

~~(b)~~ The Clerk's Office will docket the "title" of all sealed documents (but not the contents of the document) on the Court's case management system unless a motion

¹ This underlining appears in the current version of the form and does not indicate a proposed change.

~~requesting otherwise is received from one or more parties within ten (10) 14 days
from the date of this notice.~~

SIGNED at Houston, Texas, this ___ day of _____, 200_.

[JUDGE'S NAME]
UNITED STATES DISTRICT JUDGE

PROPOSED AMENDMENTS

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

_____	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL CASE NO. H-_____
	§	
	§	
_____	§	
Defendant.	§	

PROTECTIVE ORDER

1. **Proceedings and Information Governed.** This Order ("Protective Order") is made under Rule 26(c) of the Federal Rules of Civil Procedure ("FED. R. CIV. P.").

This Protective Order applies to any document, information, or other tangible or intangible thing (collectively, "documents") furnished by a party to any other party, as well as documents furnished by non-parties who receive subpoenas in connection with this action, if and when the documents are designated by a party or non-party as "Confidential Information" or "Highly Confidential Information" in accordance with the terms of this Protective Order. This Protective Order also applies to copies, excerpts, abstracts, analyses, summaries, descriptions, or other forms of recorded information or data containing, reflecting, or disclosing all or parts of designated documents.

2. **Designation and Maintenance of Documents and Information.**

A. "Confidential Information" designation means that the document contains trade secrets or commercial information not publicly known, which trade secrets or commercial information is of technical or commercial advantage to its possessor, in accordance with FED. R. CIV. P. 26(c)(7), or other information required by law or agreement to be kept confidential.

B. The "Highly Confidential Information" designation means that the document contains information that the producing party deems especially sensitive, which may include, but is not limited to, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter.

C. “Confidential Information” and “Highly Confidential Information” does not include, and this Protective Order does not apply to, documents already in the knowledge or possession of the party to whom disclosure is made unless that party is already bound by an agreement not to disclose such information, or information that has been disclosed to the public or third persons in a manner making such information no longer confidential.

3. **Documents Produced in Discovery and Depositions.**

A. **Documents and things produced** during the course of this litigation within the scope of paragraph 2(A) or 2(B) above, may be designated by the producing party as containing “Confidential Information” by placing on each page and each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

Documents and things produced during the course of this litigation within the scope of paragraph 2(A) above may be designated by the producing party as containing “Highly Confidential Information” by placing on each page and each thing a legend substantially as follows:

HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

B. **Depositions**

(i) For deposition testimony or exhibits to be entitled to protection under this Order, a party must designate the testimony and exhibits disclosed at a deposition as “Confidential Information” or “Highly Confidential Information” by requesting the reporter to so designate the transcript or any portion of the transcript at the time of the deposition.

(ii) If no such designation is made at the time of the deposition, any party has fourteen (14) ~~calendar~~ days after delivery by the court reporter of the transcript of the deposition session to designate, in writing to the other parties and to the court reporter, what portions of the transcript and which exhibits the party designates as “Confidential Information” and “Highly Confidential Information.”

(iii) During the transcription and following fourteen (14) day period after a deposition session, the transcript and exhibits must be treated as Highly Confidential Information, unless the disclosing party consents to less confidential treatment of the information.

(iv) Each party and the court reporter must attach a copy of any final and timely written designation notice to the transcript and each copy of the transcript in its possession, custody or control, and the portions designated in such notice must thereafter be treated in accordance with this Protective Order. It is the responsibility of counsel for each party to maintain materials

containing Confidential Information or Highly Confidential Information in a secure manner and appropriately identified so as to allow access to such information only to such persons and under such terms as is permitted under this Protective Order.

(v) If no such designation is made at the deposition or within the fourteen (14) ~~calendar~~ day period following delivery of the transcript, then the entire deposition will be considered devoid of Confidential Information or Highly Confidential Information.

4. Inadvertent Failure to Designate.

A. The inadvertent failure to designate a documents as “Confidential Information” or “Highly Confidential Information” will not be a waiver of a claim that the document contains confidential information, and will not prevent the producing party from designating such information as confidential at a later date in writing, so long as the designation is done with particularity.

B. In the event a producing party late designates a document as “Confidential Information” or “Highly Confidential Information,” the document must be treated by the receiving party as confidential from the time of receipt of the notice of the “Confidential Information” or “Highly Confidential Information” designation.

5. Challenges to Designations.

A party’s designation of documents “Confidential Information” or “Highly Confidential Information” is not binding if the procedures below are followed:

A. A receiving party may challenge a producing party’s designation at any time. Any receiving party may request in writing that the producing party change the designation. The producing party within fourteen (14) ~~calendar~~ days after receipt of a written challenge, must advise the receiving party whether or not it will change the designation.

B. If the parties are unable to reach agreement after the expiration of this fourteen (14) ~~calendar~~ day period, they shall confer. If they cannot resolve the issue, the receiving party may seek an order to alter the confidential status of the designated information.

C. Until the presiding judge has ruled on a dispute under this paragraph, the “Confidential Information” or “Highly Confidential Information” designation will remain in full force and effect, and the document continues to be protected by this Protective Order.

6. Disclosure and Use of Confidential Information.

A. Information designated as “Confidential Information” or “Highly Confidential Information” may only be used for purposes of preparation, trial, and appeal of this action. “Confidential Information” or “Highly Confidential Information” may not be used under any circumstances for prosecuting any patent application, for patent licensing, or for any other purpose.

B. Subject to paragraph 9 below, “Confidential Information” may be disclosed by the receiving party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order: **(a)** two employees of the receiving party who are required in good faith to provide assistance in the conduct of this litigation, including any settlement discussions, and who are identified as such in writing to counsel for the designating party in advance of the disclosure; **(b)** two in-house counsel who are identified by the receiving party; **(c)** outside counsel of record for the receiving party; **(d)** supporting personnel employed by (b) and (c), such as paralegals, legal secretaries, data entry clerks, legal clerks, and private photocopying services; **(e)** experts or consultants; and **(f)** any persons requested by counsel to furnish services such as document coding, image scanning, mock trial, jury profiling, translation services, court reporting services, demonstrative exhibit preparation, or the creation of any computer database from documents.

C. Subject to paragraph 9 below, “Highly Confidential Information” may be disclosed by the receiving party only to the following individuals, provided that such individuals are informed of the terms of this Protective Order: **(a)** outside counsel of record for the receiving party; **(b)** supporting personnel employed by outside counsel, such as paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying services; **(c)** experts or consultants; and **(d)** those individuals designated in paragraph 6(F)(c) below.

D. Further, prior to disclosing “Confidential Information” or “Highly Confidential Information” to a receiving party's proposed expert, consultant, or employees, the receiving party must provide to the producing party a signed Confidentiality Agreement in the form attached as Exhibit A, the resume or curriculum vitae of the proposed expert or consultant, the expert or consultant's business affiliation, and any current and past consulting relationships in the industry. The producing party will thereafter have fourteen (14) ~~calendar~~ days from receipt of the Confidentiality Agreement to object to any proposed individual. The objection must be made for good cause and in writing, stating with particularity the reasons for the objection. Failure to object within fourteen (14) ~~calendar~~ days constitutes approval. If the parties are unable to resolve any objection, the receiving party may apply to the presiding judge to resolve the matter. There will be no disclosure to any proposed individual during the fourteen (14) day objection period, unless that period is waived by the producing party, or if any objection is made, until the parties have resolved the objection, or the presiding judge has ruled upon any resultant motion.

E. Counsel is responsible for the adherence by third-party vendors to the terms and conditions of this Protective Order. Counsel may fulfill this obligation by obtaining a signed Confidentiality Agreement in the form attached as Exhibit B.

F. “Confidential Information” or “Highly Confidential Information” may be disclosed to a person who is not already allowed access to such information under this Protective Order *if*: **(a)** the information was previously received or authored by the person or was authored or received by a director, officer, employee or agent of the company for which the person is testifying as a designee under FED. R. CIV. P. 30(b)(6); **(b)** the designating party is the person or is a party for

whom the person is a director, officer, employee, consultant or agent; or (c) counsel for the party designating the material agrees that the material may be disclosed to the person.

In the event of disclosure under this section 6(F), only the reporter, the person, his or her counsel, the presiding judge, and persons to whom disclosure may be made and who are bound by this Protective Order, may be present during the disclosure or discussion of Confidential Information.

Disclosure of material pursuant to this section 6(F) does not constitute a waiver of the confidential status of the material so disclosed.

7. **Non-Party Information.**

The existence of this Protective Order must be disclosed to any person producing documents, tangible things, or testimony in this action who may reasonably be expected to desire confidential treatment for such documents, tangible things or testimony. Any such person may designate documents, tangible things, or testimony confidential pursuant to this Protective Order.

8. **Filing Documents With the Court.**

If any party wishes to submit Confidential Information to the court, the submission must be filed only in a sealed envelope bearing the caption of this action and a notice in the following form: Any party may submit Confidential Information to the court under seal by designating the document "sealed" in the CM/ECF system of the court or may deliver the document for filing by the Clerk's Office. If a party delivers a copy to the court, the document must be in a sealed envelope bearing the caption of this action and a label containing the following:

CONFIDENTIAL INFORMATION

[case caption]

**This envelope, which is being filed under seal,
contains documents that are subject to a Protective Order
governing the use of confidential discovery material.**

9. **No Prejudice.**

Producing or receiving "Confidential Information" or "Highly Confidential Information," or otherwise complying with the terms of this Protective Order, will *not*: (a) operate as an admission by any party that any particular "Confidential Information" or "Highly Confidential Information" contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a

party to seek a determination by the presiding judge that particular materials be produced; (d) prejudice the rights of a party to apply to the presiding judge for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for in this Protective Order with respect to any particular information or material.

10. Conclusion of Litigation.

Within sixty (60) ~~calendar~~ days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) ~~calendar~~ days after dismissal pursuant to a settlement agreement, each party or other person subject to the terms of this Protective Order is under an obligation to destroy or return to the producing party all materials and documents containing “Confidential Information” or “Highly Confidential Information,” and to certify to the producing party that this destruction or return has been done. However, outside counsel for any party is entitled to retain all court papers, trial transcripts, exhibits, and attorney work provided that any such materials are maintained and protected in accordance with the terms of this Protective Order.

11. Other Proceedings.

By entering this Protective Order and limiting the disclosure of information in this case, the presiding judge does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Protective Order who may be subject to a motion to disclose another party's information designated “Confidential” or “Highly Confidential” pursuant to this Protective Order must promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

12. Remedies.

It is **ORDERED** that this Protective Order will be enforced by the sanctions set forth in FED. R. CIV. P. 37(a) and any other sanctions as may be available to the presiding judge, including the power to hold parties or other violators of this Protective Order in contempt. All other remedies available to any person injured by a violation of this Protective Order are fully reserved.

13. Relief from Protective Order.

Any party may petition the presiding judge for good cause shown if the party desires relief from a term or condition of this Protective Order.

Signed at Houston, Texas, this ____ day of _____, 20__.

[Judge's Name]
United States District Judge

Exhibit A

[CAPTION]

**CONFIDENTIALITY AGREEMENT FOR EXPERT,
CONSULTANT OR EMPLOYEES OF ANY PARTY**

I, _____, under penalty of perjury, 28 U.S.C. § 1746, that:

1. Information, including documents and things, designated as "Confidential Information" or "Highly Confidential Information," as defined in the Protective Order entered in the above-captioned action ("Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

2. I have been given a copy of and have read the Protective Order.

3. I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by its terms.

4. I submit to the jurisdiction of the United States District Court for the Southern District of Texas for enforcement of the Protective Order.

5. I agree not to use any "Confidential Information" or "Highly Confidential Information" disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any of this information to persons other than those specifically authorized by the Protective Order, without the express written consent of the party who designated the information as confidential or by order of the presiding judge.

6. I also agree to notify any stenographic, clerical or technical personnel who are required to assist me of the terms of this Protective Order and of its binding effect on them and me.

7. I understand that I am to retain all documents or materials designated as or containing "Confidential Information" or "Highly Confidential Information" in a secure manner, and that all such documents and materials are to remain in my personal custody until the completion of my assigned duties in this matter, whereupon all such documents and materials, including all copies thereof, and any writings prepared by me containing any "Confidential Information" or "Highly Confidential Information" are to be returned to counsel who provided me with such documents and materials.

Signed at _____, _____, this _____, day of _____, 20__.

Signature

Exhibit B

[CAPTION]

CONFIDENTIALITY AGREEMENT FOR THIRD-PARTY VENDORS

I, _____, under penalty of perjury, 28 U.S.C. § 1746, that:

1. Information, including documents and things, designated as "Confidential Information" or "Highly Confidential Information" as defined in the Protective Order entered in the above-captioned action ("Protective Order"), is being provided to me pursuant to the terms and restrictions of the Protective Order.

2. I have been given a copy of and have read the Protective Order.

3. I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by its terms.

4. I submit to the jurisdiction of the United States District Court for the Southern District of Texas for enforcement of the Protective Order.

5. I agree not to use any Confidential Information or Highly Confidential Information disclosed to me pursuant to the Protective Order except for purposes of the above-captioned litigation and not to disclose any of this information to persons other than those specifically authorized by the Protective Order, without the express written consent of the party who designated the information as confidential or by order of the presiding judge.

Signed at _____, _____, this _____, day of _____, 20__.

Signature



PROPOSED AMENDMENTS

Guidelines for Litigants without Lawyers Southern District of Texas

8. Service of Process (Summons)¹

- A. Issuance of Summons. Upon the filing of a complaint, the plaintiff is responsible for prompt service of the summons and a copy of the complaint on each of the defendants named in the complaint. (Fed.R.Civ.P. 4 and L.R. 4) Failure to serve the summons and complaint within 120 days after filing of the complaint is grounds for dismissal of each party not served.

In addition to the summons and complaint, the above mentioned Order for Conference and the Instructions for the Preparation of the Joint Report of Meeting and Discovery/Case Management Plan must be served on all defendants.

A summons must be prepared in duplicate by the plaintiff for each defendant. (Appendix D) In addition, the plaintiff must submit a copy of the complaint for each defendant at the time the complaint is filed. The summons must show the time within which the defendant is required to respond to the complaint. All defendants have ~~twenty (20)~~ 21 days, with the exception of the United States which has sixty (60) days to respond. The time runs from the date the defendant is served with the complaint.

The summons will be signed and sealed by the Clerk and returned to the plaintiff together with the copies of the complaint to be served. The plaintiff must then serve the summons and complaint as provided by Fed.R.Civ.P. 4. To avoid costs, the plaintiff may notify a defendant of the commencement of the action and request that the defendant waive service of a summons. (See Fed.R.Civ.P. 4(d) and Appendices E and F)

* * * * *

10. The Answer

- A. The defendant in an ordinary civil case will have ~~twenty (20)~~ 21 days from the date of service of the complaint to file an answer. The United States or a federal official will have sixty (60) days.

* * * * *

¹ The underlining in the headings and subheadings appears in the current version of the Guidelines and does not indicate a proposed amendment.

11. Motions against the Complaint

* * * * *

- C. If such a motion is made, a plaintiff will have ~~twenty (20)~~ 21 days from the date of filing in which to file a response. It is very important to respond to such motions; otherwise, the Court may assume that the motion is unopposed. (L.R. 7)

12. Motions (Local Rule 7)

As stated above, a motion is an application to the Court asking that the Court take certain action with respect to the conduct of the case.

Unless made orally during a hearing or trial, motions should be in writing, should state the action sought, and should set forth the facts. Motions are the primary way for litigants to ask the Court to take action in a case. They must be filed with the Clerk, and copies must be mailed to all opposing parties (L.R. 5); motions should not be sent directly to the judges.

Every motion must² have a statement that the movant has conferred with opposing counsel and was unable to reach an agreement for the disposition of the matters raised in the motion. Failure to comply with this rule may result in the Court striking the motion.

Each party opposing a motion has ~~twenty (20)~~ 21 days from the date of filing of a motion to respond. Failure to respond will be taken as a representation of no opposition.

²This underlining appears in the current version of the Guidelines and does not indicate a proposed amendment.

