



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

NOTICE

The attached Proposed Local Patent Rules and Procedures have been recommended by the Houston Division District Judges for adoption by the full Court, subject to public notice and opportunity for comment pursuant to 28 U.S.C. § 2071. These rules and procedures are the result of publication of exposure drafts, written comments from members of the patent bar of this District, a public meeting, and discussion among members of the local patent bar and the judiciary.

Comments on the proposed rules may be made in writing on or before October 15, 2007, to:

Hon. Nancy F. Atlas
United States District Judge
United States Courthouse
Rm 9015
515 Rusk Street
Houston, TX 77002

Dated: September 14, 2007

Attachment: Proposed Local Patent Rules and Procedures

RULES OF PRACTICE FOR
PATENT CASES
IN THE SOUTHERN DISTRICT OF TEXAS
(Revised – Sept. 12, 2007)

1. SCOPE OF RULES

1-1. Title.

These are the Rules of Practice for Patent Cases before the United States District Court for the Southern District of Texas (“Patent Rules,” to be cited as “P. R. ___”).

1-2. Scope and Construction.

(a) These Patent Rules apply to all civil actions filed in or transferred to the Southern District of Texas that allege claims for patent infringement in a complaint, counterclaim, cross-claim or third-party claim, or seek a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable (a “patent claim”).

(b) The presiding judge may accelerate, extend, eliminate, or modify the obligations or deadlines established in these Patent Rules based on the circumstances of a particular case, including, without limitation, its complexity or the number of patents, claims, products, or parties involved.

(c) If any motion filed before the Claim Construction Hearing (*see* P.R. 4-6) raises claim construction issues, the presiding judge may, for good cause, defer the motion until after the parties’ disclosures or filings for the Claim Construction Hearing.

(d) The Local Civil Rules of the Southern District of Texas apply to patent cases except to the extent that the Local Civil Rules are inconsistent with these Patent Rules.

1-3. Effective Date.

These Patent Rules will become effective on _____, 2007, and apply to all cases involving a patent claim filed thereafter, unless otherwise ordered by the presiding judge. The parties in each case involving a patent claim pending on the effective date of these Patent Rules must confer and, to the extent possible, submit an agreed scheduling order consistent with these Patent Rules. The parties must use the Scheduling Order Template available at the Southern District of Texas Court website (www.txs.uscourts.gov). To the extent the parties cannot agree, they must notify the presiding judge, who will resolve the issues.

2. GENERAL PROVISIONS

2-1. Procedure.

(a) **Parties' Preparation for Initial Case Management Conference.** In addition to the matters covered by FED. R. CIV. P. 26, the parties must confer and address in their Joint Case Management Report the following topics:

(1) any proposed modification of the schedule provided in the Scheduling Order Template, which is available at the District's website;

(2) a plan for completing electronic discovery;

(3) the need for presenting technical tutorials to the presiding judge and the mode for such presentations (*i.e.*, live testimony, video presentations) at or before the claim construction hearing;

(4) any deviations from and additions to the form protective order (available at the District's website);

(5) whether any party desires to present live testimony at the claim construction hearing;

(6) the need for and any specific limits on discovery relating to claim construction, including depositions of fact and expert witnesses;

(7) the order of presentation at the claim construction hearing;

(8) the scheduling of a claim construction prehearing conference after the "Joint Claim Construction and Prehearing Statement" provided in P.R. 4-3 has been filed; and

(9) whether the presiding judge should authorize the filing under seal of any documents containing confidential information,

(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 (20) 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.

(c) Case Management Conference and Scheduling Order. At the initial case management conference, after considering the parties' Joint Case Management Report, the presiding judge will enter a Case Management Scheduling Order ("Scheduling Order").

(d) Further Case Management Conferences. If some or all of the matters provided under P.R. 2-1(a) are not resolved or decided at the initial case management conference, the parties must propose dates for further case management conferences.

2-2. Confidentiality and Proposed Protective Order.

Documents and information produced in cases governed by these Patent Rules will be governed by the form protective order available at the District's website, www.txs.uscourts.gov, unless the presiding judge otherwise orders. If the parties seek to modify the form protective order, they must submit to the presiding judge, with the Joint Case Management Report, the protective order they propose and must identify proposed variations to the form protective order.

2-3. Certification of Initial Disclosures and English Translations.

(a) All statements, disclosures, or charts filed or served in accordance with these Patent Rules must comply with the Federal Rules of Civil Procedure and the Administrative Procedures for Electronic Filing of Documents in Civil and Criminal Cases issued by the United States District Court for the Southern District of Texas.

(b) To the extent any document or disclosure is not in English, an English translation of the portion(s) relied on must be produced.

2-4. Admissibility.

Statements, disclosures, or charts governed by these Patent Rules are admissible in evidence to the extent permitted by the Federal Rules of Evidence or the Federal Rules of Civil Procedure. However, the statements or disclosures provided for in P.R. 4-1 and 4-2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the deadlines set out in these Patent Rules.

2-5. Relationship to Federal Rules of Civil Procedure.

(a) Unless the presiding judge otherwise directs, the scope of discovery is not limited to the preliminary infringement contentions or preliminary invalidity contentions, but is governed by the Federal Rules of Civil Procedure.

(b) Except as provided in this paragraph or as otherwise ordered, it is not a legitimate ground for objecting to an opposing party's discovery request or declining to disclose information under FED. R. CIV. P. 26(a)(1) that the discovery request or disclosure requirement is premature or otherwise conflicts with these Patent Rules. A party may object to certain categories of discovery requests or may decline to disclose information under FED. R. CIV. P. 26(a)(1) on the ground that the request or disclosure is premature in light of the timetable provided in the Patent Rules. The categories are:

- (1) requests seeking to elicit a party's claim construction position;
- (2) requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;
- (3) requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and
- (4) requests seeking to elicit from an accused infringer the identification of any opinions of counsel and related documents that it intends to rely upon as a defense to a willful infringement allegation; however, a party may not assert a prematurity objection to a request for nonprivileged information identifying the existence of such opinions of counsel.

(c) When a party properly objects to a discovery request, or declines to provide information in its initial disclosures under FED. R. CIV. P. 26(a)(1), as set forth above, that party must provide the requested information on the date it is required to provide the

requested information to an opposing party under these Patent Rules, unless there is another legitimate ground for objection.

3. PATENT INITIAL DISCLOSURES

3-1. Disclosure of Asserted Claims and Preliminary Infringement Contentions.

As provided in the Scheduling Order issued by the presiding judge at the initial scheduling conference, a party claiming patent infringement must serve on all parties a “Disclosure of Asserted Claims and Preliminary Infringement Contentions,” which must contain the following information:

- (a) each claim of each patent-in-suit that is allegedly infringed by an opposing party;
- (b) for each asserted claim, a specific and separate identification of each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party, including where possible:
 - (1) each product, device, and apparatus identified by name or model number, and
 - (2) each method or process identified by name, any product, device, or apparatus that, 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 is allegedly governed by 35 U.S.C. § 112, ¶ 6, the identity of the structures, acts, or materials in the Accused Instrumentality that performs the claimed function;
- (d) for each Accused Instrumentality and each element of each asserted claim, identification of whether the element is claimed to be literally present or present under the doctrine of equivalents;
- (e) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

- (f) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

3-2. Document Production Accompanying Disclosure.

(a) With the “Disclosure of Asserted Claims and Preliminary Infringement Contentions,” the party claiming patent infringement must produce to each opposing party or make available for inspection and copying, the following:

- (1) documents (*e.g.*, contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third-party or joint development agreements) sufficient to show each discussion with, disclosure to, or other manner of providing to a third-party, or sale of or offer to sell, the claimed invention before the application date for the patent-in-suit;
- (2) documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the application date for the patent-in-suit or the priority date identified under P.R. 3-1(e), whichever is earlier;
- (3) a copy of the file history for each patent-in-suit; and
- (4) license agreements for the patents-in-suit.

(b) The producing party must separately identify by production number which documents correspond to each category.

(c) A party’s production of a document as required by this paragraph is not an admission that the document is evidence of or is prior art under 35 U.S.C. § 102.

3-3. Preliminary Invalidity Contentions.

After service upon it of the “Disclosure of Asserted Claims and Preliminary Infringement Contentions,” each party opposing a patent infringement claim must serve on all parties, by the deadline set forth in the Scheduling Order, “Preliminary Invalidity Contentions” containing the following information:

(a) the identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious, including:

(1) each prior art patent identified by its number, country of origin, and date of issue;

(2) each prior art publication identified by its title, date of publication, and, author and publisher when feasible;

(3) prior art under 35 U.S.C. § 102(b) identified by 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 that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known;

(4) prior art under 35 U.S.C. § 102(f) identified by the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived; and

(5) prior art under 35 U.S.C. § 102(g) identified by the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention prior to the patent applicant(s);

(b) whether each item of prior art anticipates each asserted claim or renders it obvious and, if the latter, the detailed bases for these contentions;

(c) 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, ¶ 6, the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) any other invalidity grounds including, but not limited to indefiniteness under 35 U.S.C. § 112, ¶ 2, or lack of enablement or written description under 35 U.S.C. § 112, ¶1, of any of the asserted claims, including the detailed basis for these contentions.

3-4. Production Accompanying Preliminary Invalidity Contentions.

With the “Preliminary Invalidity Contentions,” the party opposing a claim of patent infringement must produce or make available for inspection and copying:

(a) documents and information sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its P.R. 3-1(c) chart (*e.g.*, source code, specifications, schematics, flow charts, artwork, or formulas);

(b) a copy of each item of prior art identified under P.R. 3-3(a) that does not appear in the file history of the patent(s) at issue; and

(c) documents and information, including summaries when reasonably available, sufficient to show the amount sold, revenues, costs, and profits of each Accused Instrumentality identified under P.R. 3-1(b) since the issuance of the patents-in-suit.

3-5. Disclosure Requirement in Patent Cases Seeking Declaratory Judgment.

(a) **Invalidity Contentions If No Infringement Claim.** In all cases in which a party seeks a declaratory judgment (“declaratory plaintiff”) that a patent is not infringed, is invalid, or is unenforceable, P.R. 3-1 and 3-2 do not apply unless and until a party makes a patent infringement claim. If the declaratory defendant does not assert a patent infringement claim in its response to the claim, then, by the deadline set in the Scheduling Order, the declaratory plaintiff must serve on each opposing party its Preliminary Invalidity Contentions conforming to P.R. 3-3 and must produce or make available for inspection and copying the documents and information described in P.R. 3-4. The declaratory plaintiff will file its Final Invalidity Contentions by the deadline in the Scheduling Order.

(b) **Application of Rules When No Specified Triggering Event.** If the pleadings in a case do not initially trigger the application of these Patent Rules, but later filings reveal that patent claims or issues are involved, the parties, as soon as practicable, must confer about whether these Patent Rules should be applied to the case and notify the presiding judge of the issue.

(c) **Inapplicability.** P.R. 3-5 does not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint alleging infringement of the same patent.

3-6. Amended and Final Contentions – Leave of Court Not Required.

Each party’s “Preliminary Infringement Contentions” and “Preliminary Invalidity Contentions” will be that party’s final contentions, *except* as set forth below.

- (a) If a party claiming patent infringement has good cause to believe that the material produced by an opposing party under P.R. 3-4 requires amendment of its “Preliminary Infringement Contentions” with respect to the information required by P.R. 3-1(c) and (d), leave of court is not required. These amended contentions must be served within a reasonable time after the opposing party’s document production.
- (b) If a party claiming patent infringement has good cause to believe that the Court’s Claim Construction Ruling requires “Final Infringement Contentions” amending its “Preliminary Infringement Contentions” with respect to the information required by P.R. 3-1(c) and (d), leave of court is not required. These Final Infringement Contentions must be served by the deadline set in the Scheduling Order.
- (c) By the deadline set in the Scheduling Order, each party opposing a claim of patent infringement may serve, without leave of court, “Final Invalidity Contentions” that amend that party’s “Preliminary Invalidity Contentions” with respect to the information required by P.R. 3-3, *if either*:
 - (1) a party claiming patent infringement has served amended infringement contentions under P.R. 3-6(a) or “Final Infringement Contentions” under P.R. 3-6(b), *or*
 - (2) the party opposing a patent infringement claim has good cause to believe that the Court’s Claim Construction Ruling requires the amendment.

3-7. Amendments to Contentions By Leave of Court.

(a) Amendment or modification of the Preliminary or Final Infringement Contentions or the Preliminary or Final Invalidity Contentions, other than expressly permitted in P.R. 3-6, may be made only if the presiding judge finds there is good cause for the requested changes.

(b) Good cause may include, but is not limited to, newly discovered (1) accused instrumentalities, (2) bases for claiming infringement, or (3) prior art references, provided that good cause may be found only if the party seeking leave to amend shows that it exercised diligence in seeking the newly discovered information or documents.

3-8. Willfulness.

(a) If a party opposing a patent infringement claim will rely on an opinion of counsel as part of a defense to a claim of willful infringement, that party must by the date(s) set in the Scheduling Order:

- (1) produce or make available for inspection and copying each opinion and documents relating to the opinion as to which that party agrees the attorney-client privilege or work-product protection has been waived; and
 - (2) serve a privilege log identifying any other documents, except those authored by counsel acting solely as litigation counsel, relating to the subject matter of the opinion and withheld based on attorney-client privilege or work product protection claims.
- (b) If a party opposing a patent infringement claim does not comply with the requirements of P.R. 3-8, that party may not rely on an opinion of counsel as part of a defense to willful infringement unless all parties agree or the presiding judge permits the defense based on a good cause showing.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms and Claim Elements for Construction.

- (a) By the deadline set in the Scheduling Order, each party must simultaneously exchange a list of claim terms, phrases, or clauses that the party contends should be construed by the presiding judge and must identify any claim element that the party contends should be governed by 35 U.S.C. § 112, ¶ 6.
- (b) The parties must then meet and confer for the purposes of finalizing this list, resolving or narrowing differences, and facilitating the preparation of a Joint Claim Construction and Prehearing Statement.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) By the deadline set in the Scheduling Order, the parties must simultaneously exchange a proposed “Preliminary Claim Construction” of each element of each claim term, phrase, or clause in issue. Each “Preliminary Claim Construction” must also identify the structures, acts, or materials corresponding to each claim element governed by 35 U.S.C. § 112, ¶ 6.

(b) At the same time the parties exchange their respective “Preliminary Claim Constructions,” they must also exchange a preliminary identification of extrinsic evidence they contend supports their respective claim constructions, such as dictionary definitions, citations to learned treatises and prior art, and testimony of fact and expert witnesses. The parties must identify each item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to each fact or expert witness a party intends to rely on for claim construction, the party must also provide a brief description of the substance of that witness’s proposed testimony.

(c) The parties must then meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4-3. Joint Claim Construction and Prehearing Statement.

(a) By the deadline set in the Scheduling Order, the parties must file a Joint Claim Construction and Prehearing Statement that contains the following information:

(1) the construction of those claim terms, phrases, or clauses on which the parties agree;

(2) each party’s proposed construction of each disputed element of a claim, together with an identification of all references from the specification or prosecution history that support that claim construction, and an identification of extrinsic evidence known to the party on which it intends to rely either to support its proposed claim construction or to oppose any other party’s proposed claim construction, such as dictionary definitions, citations to learned treatises and prior art, and fact and expert witnesses;

(3) the anticipated time necessary for the claim construction hearing;

(4) whether any party proposes to call one or more witnesses at that hearing, the identity of each witness and, for each such expert witness, a summary of the witness’s anticipated testimony; and

(5) a list of any other issues that might appropriately be taken up at a prehearing conference before the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

(b) At the time of filing the Joint Claim Construction Statement, for each expert witness a party discloses in response to P.R. 4-3(a)(4), that party must provide to the opposing parties the materials required by FED. R. CIV. P. 26(a)(2).

4-4. Completion of Claim Construction Discovery.

The parties must complete by the deadline in the Scheduling Order all discovery relating to claim construction identified in the Joint Claim Construction and Prehearing Statement.

4-5. Claim Construction Briefs and Charts.

(a) By the deadlines set in the Scheduling Order:

- (1) the party claiming patent infringement must serve and file an opening brief and any evidence supporting its claim construction;
- (2) each opposing party must serve and file its responsive brief and supporting evidence;
- (3) the party claiming patent infringement must serve and file its reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response; and
- (4) the parties must submit the Joint Claim Construction Chart (*see* P.R. 4-5(b)) on electronic media in WordPerfect format or in such other format as the presiding judge directs.

(b) The Joint Claim Construction Chart must contain:

- (1) a column listing in separate rows the complete language of each disputed claim, with disputed terms in bold type;
- (2) separate columns for each party's proposed construction of each disputed term;
- (3) a column entitled "Court's Construction" and otherwise left blank; and
- (4) the patent and claim numbers where the disputed terms appears.

(c) The parties may also list agreed claim terms in the Joint Claim Construction Chart. If included, the agreed terms must be marked "[**AGREED**]" and state in the "Court's Construction" column the parties' agreed construction.

(d) The purpose of the Joint Claim Construction Chart is to assist the presiding judge and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements of this rule, the parties are afforded substantial latitude to fashion a chart in a format that most clearly and efficiently outlines the disputed terms and proposed constructions.

4-6. Claim Construction Hearing.

The presiding judge will determine if an evidentiary or other form of claim construction hearing is necessary. The hearing will be conducted on the date set in the Scheduling Order, unless otherwise reset by the judge.

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

_____, § Rev. – Sept. 12, 2007
Plaintiff, §
v. §
CIVIL ACTION NO. H-_____
_____, §
Defendant. §

ORDER SETTING SCHEDULING CONFERENCE,
PROPOSED SCHEDULING ORDER,
SCOPE OF PERMISSIBLE DISCOVERY AND
DIRECTIVE TO CONFER

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) days** before the conference. The parties must file no later than **five (5) business 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. 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 (10) 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 genuinely confidential or proprietary.
 - (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 requesting otherwise is received from one or more parties within ten (10) days from the date of this notice.

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

PROPOSED PATENT CASE – SCHEDULING ORDER

(Rev. -- Sept. 12, 2007)

[INSERT – CASE CAPTION]

It is hereby **ORDERED**, after consultation with the parties, that the following schedule will apply in this case:

0	1/1/05 [sample date: chosen for illustration]	Scheduling Conference (see # 32 re: MEDIATION)
1	[2 weeks after Scheduling Conf.] 1/15/05	Comply with P.R. 3-1 and P.R. 3-2: Parties to make disclosure of asserted claims and preliminary infringement contentions & make document production. <i>After this date</i> , it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule (P.R.) 3-7. Join additional parties. It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court to join additional parties. Add new patents and/or claims for patents-in-suit. It is not necessary to file a motion to add additional patents or claims before this date. Thereafter, it is necessary to obtain leave of court to add patents or claims.
2	[6 weeks after # 1] 2/26/05	Comply with P.R. 3-3 and 3-4: Parties to serve preliminary invalidity contentions and make document production. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R.. 3-7. Add any inequitable conduct allegations to pleadings. Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations to pleadings.
3	[2 weeks after # 2] 3/12/05	Comply with P.R. 4-1: Parties' exchange of proposed terms and claim elements needing construction.
4	[3 weeks after # 3] 4/2/05	Comply with P.R. 4-2: Parties' exchange of preliminary claim constructions and extrinsic evidence. Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).

5	[9 weeks after # 2; 17 weeks after Conf.] 4/30/05	Deadline to comply with P.R. 4-3: Filing of joint claim construction and pre-hearing statement. Disclosure of parties' claim construction experts & service of FED. R. CIV. P. 26(a)(2) materials
6	[matches # 5] 4/30/05	Deadline for all parties to file amended pleadings (pre-claim construction). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. (It will be necessary to file a Motion for Leave to Amend after this deadline.) NOTE: If the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to P.R. 3-7 irrespective of whether the amendment is made prior to this deadline.
7	[22 weeks after Scheduling Conf.] 6/4/05	Each party to provide name, address, phone number, and curriculum vitae for up to three (3) candidates for a court-appointed special master (<i>see</i> FED. R. CIV. P. 53) or court-appointed expert (<i>see</i> FED. R. EV. 706), with information regarding the nominee's availability for <i>Markman</i> hearing or other assignments as deemed necessary by the court. The parties shall indicate if they agree on any of the nominees.
8	[22 weeks after Scheduling Conf.; generally matches # 7] 6/4/05	Deadline for parties (optional) to provide Court with written tutorials concerning technology involved in patent in issue. If a special master or court-appointed expert is hereafter selected, the parties will provide each tutorial to the master or expert.
9	[2 weeks after # 6; generally 19 weeks after Scheduling Conf.] 5/14/05	Responses to amended pleadings due.
10	[2 weeks after # 9; 21 weeks after Scheduling Conf.] 5/28/05	Discovery deadline on claim construction issues (<i>see</i> P.R. 4-4)
11	[7 weeks after # 5; 3 weeks after # 10; generally 24 weeks after Scheduling Conf.] 6/18/05	Comply with P.R. 4-5(a): the party claiming patent infringement must serve and file a Claim Construction Opening Brief with its supporting evidence. The moving party is to provide the Court with 2 copies of the binders containing their Opening Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Opening Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.

12	[2 weeks after # 11] 7/2/05	Comply with P.R. 4-5(b): Responsive Brief and supporting evidence due to party claiming patent infringement. The moving party is to provide the Court with two (2) courtesy copies of the Responsive Brief and exhibits. If a special master or court-appointed expert has been appointed, the nonmoving party must supply a copy of its Response on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.
13	[1 week after # 12] 7/9/05	Comply with P.R. 4-5(c): Party claiming infringement shall file a Reply Brief and supporting evidence on claim construction. The moving party is to provide the Court with two (2) copies of the Reply Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Reply Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert. Parties to file a notice with the Court stating the estimated amount of time requested for the Claim Construction (<i>Markman</i>) Hearing. The Court will notify the parties if it is unable to accommodate this request.
14	[1 week <i>before Markman</i> Hearing] 8/6/05	Parties to submit Claim Construction Chart in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(d).
15	[approx. 15 weeks after # 5; approx. 5 weeks after # 13; 32 weeks after Scheduling Hrg.] 8/13/05	Claim Construction (<i>Markman</i>) Hearing at ____ .m. at the United States District Court, 515 Rusk Street, Courtroom 9-F, Houston, Texas
16	[<i>Markman</i> ruling within 6 weeks after <i>Markman</i> hearing] 9/24/05	Court's Decision on Claim Construction (<i>Markman</i> Ruling) <u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u>
17	[4 weeks after <i>Markman</i> Ruling (# 16)] 10/22/05	Deadline for final infringement contentions and to amend pleadings on infringement claims NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
18	[6 weeks after <i>Markman</i> Ruling (# 16); 2 weeks after # 17] 11/5/05	Deadline for final invalidity contentions and to amend pleadings on invalidity claims. NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.

19	[matches # 17; ~10.5 mos. after Scheduling Conf.] 10/22/05	Comply with P.R.3-8. All parties furnish documents and privilege logs pertaining to willful infringement.
20	[4 weeks after # 19] [~ 8 weeks after <i>Markman</i> Ruling (# 16) and ~11.5 mos. after Scheduling Conf.] 11/19/05	Date for designation of expert witnesses on non-construction issues on which the party has the burden of proof (“BOP”) and service of expert witness reports. [Refer to Fed. Rules of Civil Proc. for information required.]
21	[4 weeks after # 20] 12/17/05	Date for designation of responsive expert witnesses on non-claim construction issues on which party does <i>not</i> have BOP, and service of responsive expert witness reports. [Refer to Fed. Rules of Civil Proc. for information required.]
22	[8 weeks after # 21, ~ 5 mos. after <i>Markman</i> Ruling (# 16), and ~14.5 mos. after Sched. Conf.] 2/11/06	Discovery Deadline on all issues. <u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u>
23	Motions due: 3/11/06 [4+ weeks after #22] Responsive Briefs due (3 wks): 4/1/06 Reply Briefs due (1 wk): 4/8/06	Dispositive and Non-Dispositive Motions and Briefing deadlines
24	[~ 8 weeks. after motions in # 23 filed; ~17 mos. from Sched’l’g Conf.] 5/6/06	Court’s ruling on all pending motions
25	[4 weeks after # 24; at least 2 weeks before Docket Call] 6/3/06	Joint Pretrial Order due including all components required by Local Rules and this Court’s Procedures (such as witness lists, exhibit lists and copies of exhibits (<i>see</i> # 29 below), and (a) in bench trials, proposed findings of fact and conclusions of law with citation to authority and (b) for jury trials, joint proposed jury instructions with citation to authority, and proposed verdict form). Statement of Expected Length of Trial: _____ days (~6 hours with jury per day).
26	[same day as JPTO (# 25) – but filed separately] 6/3/06	Written notice due for request for daily transcript or real time reporting of trial proceedings.
27	[Same day as JPTO (# 25)] 6/3/06	Video and Deposition Designations due. Each party who proposes to offer a deposition by video must file a disclosure identifying the line and page numbers to be offered. All other parties will have 1 week to file a response requesting cross designation line and page numbers to be included. Each party is responsible for preparation of the final edited video in accordance with their parties’ designations and the Court’s rulings on objections.
28	[same day as JPTO (# 25)] 6/3/06	Motions in Limine due.

29	[1 week after JPTO filed (# 25)] 6/10/06	Objections to opponents' proposed witnesses, proposed exhibits, designated deposition testimony, and any other matters due.
30	[1 day before Docket Call – 3 p.m.] 6/17/06	The parties are directed to confer and advise the Court about (a) which limine requests the parties agree to.
31	[18.5 mos. after Scheduling Conf.; ~20 mos. after case filed] 6/18/06	9:00 a.m. Docket Call/ Final Pretrial Conference at the United States District Court, 515 Rusk Street, Houston, Texas.
32	MEDIATION is required prior to Docket Call, 6/17/06	<i>The Court refers most patent cases to mediation. The parties should discuss proposed mediators and timing of mediation prior to the Scheduling Conference and be prepared with recommendations for the Court.</i> Mediation to be completed by this date. The parties must select a mediator for this case. The parties and mediator must comply with S.D. TEXAS LOCAL RULE 16.
33	[generally, the first day of jury trial] ~ July, 2006	9:00 a.m. JURY SELECTION at the United States District Court
34	[Generally same date as jury selection # 33] ~ July, 2006	JURY TRIAL (9:30 a.m.) commences, subject to Court's criminal docket

OTHER REQUIREMENTS and LIMITATIONS:

- (a) **All depositions** to be read into evidence as part of the parties' case-in-chief must be **EDITED** (*with* notice to opposing parties) to exclude all unnecessary, repetitious, and irrelevant testimony. **ONLY** those portions relevant to the issues in controversy may be read into evidence.
- (b) The Court will refuse to entertain any **motion to compel discovery** filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. *See* Southern District of Texas Local Rules 7.1, 7.2.
- (c) The following **excuses will neither warrant a continuance** nor justify a failure to comply with the discovery deadline:
 - (i) the fact that there are motions for summary judgment or motions to dismiss pending;
 - (ii) the fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;

(iii) the failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

(d) **Exhibits**

(i) Each party must provide the Court with a courtesy copy of exhibits and exhibit lists. The presiding judge's preferred format for Exhibit Lists is available on the Court's website at www.txs.uscourts.gov under **Court Procedures**.

(ii) If exhibits are voluminous, provide only specific pages that pertain to the issues on the two courtesy copies. The original exhibits that are agreed upon by the parties should be ready to be tendered to the Clerk of the Court at the beginning of trial. Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.

(iii) The parties are to label all proposed exhibits with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. For example:

Plaintiff's Exhibit
Exhibit No. _____
Case No. _____

Defendant's Exhibit
Exhibit No. _____
Case No. _____

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

[JUDGE'S NAME]
UNITED STATES DISTRICT JUDGE

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

_____	§	<u>(Rev. – 9/12/07)</u>	
		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:

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