

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

PATENT CASE SCHEDULE

<u>Event</u>	<u>Scheduled Time</u>	<u>Total Time After Complaint</u>
<u>Service of Complaint</u>		
<u>Answer or Other Response to Complaint</u>		5 weeks
<u>Initial Disclosures of Both Parties</u> (LPR 2.1)	14 days After Answer or other Responsive Pleading	7 weeks
<u>Initial Infringement Contentions</u> (LPR 2.2)	14 days After Initial Disclosures	9 weeks
<u>Initial Non-Infringement and Invalidity Contentions</u> (LPR 2.3)	14 days After Infringement Contentions	11 weeks
<u>Initial Response To Invalidity Contentions</u> (LPR 2.5)	14 days After Invalidity Contentions	13 weeks
<u>Final Infringement Contentions</u> (LPR 3.1)	18 weeks After Initial Infringement Contentions	27 weeks
<u>Final Invalidity Contentions</u> (LPR 3.2)	28 days After Plaintiffs Final Infringement Contentions	31 weeks
<u>Exchange of Claim Terms Needing Construction</u> (LPR 4.1)	14 days After Final Invalidity Contentions	33 weeks
<u>Opening Claim Construction Brief</u> (LPR 4.2(a))	28 days After Exchange of Claims Terms	37 weeks
<u>Responsive Claim Construction Brief</u> (LPR 4.2(c))	28 days After Plaintiffs Claim Construction Brief	41 weeks

<u>Reply Claim Construction Brief</u> (LPR 4.2(d))	14 days After Responsive Claim Construction Briefs	43 weeks
<u>Joint Claim Construction Chart</u> (LPR 4.2(e))	7 days After Reply Claim Construction Brief	44 weeks
<u>Claim Construction Hearing</u> (LPR 4.3)	21 days After Reply Claim Construction Brief	46 weeks
<u>Claim Construction Ruling</u>	Four weeks (?)	50 weeks
<u>Close of Fact Discovery After Claim Construction Ruling</u>	42 days After Claim Construction Ruling	56 weeks
<u>Expert Reports of Parties with Burden of Proof</u> (LPR 5.1(b))	21 days After close of discovery after the Claim Construction Ruling	59 weeks
Rebuttal Expert Reports (LPR 5.1)	35 days After Initial Expert Reports	64 weeks
<u>Completion of Expert Witness Depositions</u> (LPR 5.2)	35 days After Rebuttal Expert Reports	69 weeks
<u>Final Day for Filing Dispositive Motions</u> (LPR 6.1)	28 days After Close of All Discovery	73 weeks
<u>Case Ready for Trial</u>	8 weeks After Filing Dispositive Motions	81 weeks

Key Time Intervals:

To Final Infringement Contentions: 6.3 months

To Claim Construction Hearing: 10.6 months

To Summary Judgment Motions: 17 months

To Trial: 19 months

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA**

LOCAL PATENT RULES

PREAMBLE

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

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

The initial disclosures required by the Rules are not intended to confine a party to the contentions it makes at the outset of the case. It is not unusual for a party in a patent case to learn additional grounds for claims of infringement, non-infringement, and invalidity as the case progresses. After a reasonable period for fact discovery, however, each party must provide a final statement of its contentions on relevant issues, which the party may thereafter amend only upon "upon a showing of good cause and absence of unfair prejudice, made in timely fashion following discovery of the basis for the amendment." LPR 3.4.

The Rules also provide a standard structure for claim construction proceedings, requiring the parties to identify and exchange position statements regarding disputed claim language before presenting disputes to the Court. In addition, because confidentiality issues abound in patent litigation, the Rules provide for a standardized protective order (with options that can be tailored to specific cases) that is deemed to be in effect upon the initiation of the lawsuit.

1. SCOPE OF RULES

LPR 1.1 Application and Construction

These Rules (“LPR”) apply to all cases filed in or transferred to this District after their effective date in which a party makes a claim of infringement, non-infringement, invalidity, or unenforceability of a utility patent. The Court may apply all or part of the LPR to any such case already pending on the effective date of the LPR. The Court may modify the obligations and deadlines of the LPR based on the circumstances of any particular case. If a party files, prior to the Claim Construction Proceedings provided for in LPR Section 5, a motion that raises claim construction issues, the Court may defer the motion until after the Claim Construction Proceedings.

LPR 1.2 Initial Scheduling Conference

In their conference pursuant to Fed. R. Civ. P. 26(f), the parties must discuss and address those matters found in the form scheduling order contained in LPR Appendix “A.” A completed proposed version of the scheduling order is to be presented by the Court within seven (7) days after the Rule 26(f) conference or at such other time as the Court directs.

LPR 1.3 Fact Discovery

Fact discovery shall commence upon the date for the Initial Disclosures under LPR 2.1 and shall be completed twenty-eight (28) days after the date for exchange of claim terms and phrases under LPR 4.1. Fact discovery may resume upon entry of a claim construction ruling and shall end forty-two (42) days after entry of the claim construction ruling.

LPR 1.4 Confidentiality

No later than seven (7) days prior to the exchange of Initial Disclosure under LPR 2.1, the parties must file an agreed Protective Order using the format provided by LPR Appendix B. The agreed Protective Order shall be deemed to be in effect as of the date for each party’s Initial Disclosures.

LPR 1.5 Certification of Disclosures

All disclosures made pursuant to LPR 2.2, 2.3, 2.4, 2.5, 3.1, and 3.2 must be dated and signed by counsel of record (or by the party if unrepresented by counsel) and are subject to the requirements of Federal Rules of Civil Procedure 11 and 26(g).

LPR 1.6 Admissibility of Disclosures

The disclosures provided for in LPR 2.2, 2.3, 2.4, and 2.5 are inadmissible as evidence on the merits.

Comment

The purpose of the initial disclosures pursuant to LPR 2.2 — 2.5 is to identify the likely issues in the case, to enable the parties to focus and narrow their discovery requests. Permitting use of the initial disclosures as evidence on the merits would defeat this purpose. A party may make reference to the initial disclosures for any other appropriate purpose.

LPR 1.7 Relationship to Federal Rules of Civil Procedure

A party may not object to mandatory disclosures under Federal Rule of Civil Procedure 26(a) or to a discovery request on the ground that it conflicts with or is premature under the LPR, except to the following categories of requests and disclosures:

- (a) requests for a party's claim construction position;
- (b) requests to the patent claimant for a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality;
- (c) requests to an accused infringer for a comparison of the asserted claims and the prior art;
- (d) requests to an accused infringer for its non-infringement contentions; and
- (e) requests to the patent claimant for its contentions regarding the presence of claim elements in the prior art.

Federal Rule of Civil Procedure 26's requirements concerning supplementation of disclosure and discovery responses apply to all disclosures required under the LPR.

2. PATENT INITIAL DISCLOSURES

Comment

LPR 2.2 — 2.5 supplements the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to LPR 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties' disclosures must be meaningful — as opposed to boilerplate - and non-evasive. These provisions should be construed accordingly when applied to particular cases.

LPR 2.1 Initial Disclosures

The plaintiff and any defendant that files an answer or other response to the complaint shall exchange their initial disclosures under Federal Rule of Civil Procedure 26(a)(1) ("Initial Disclosures") within fourteen (14) days after the defendant files its answer or other response. As

used in this Rule, the term “document” has the same meaning as in Federal Rule of Civil Procedure 34(a):

(a) A party asserting a claim of patent infringement shall produce or make the following available for inspection and copying along with its Initial Disclosures, to the extent they are in the party’s possession, custody or control.

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

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

(3) all documents concerning communications to and from the U.S. Patent Office for each patent in suit and for each patent on which a claim for priority is based; and

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

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

(b) A party opposing a claim of patent infringement shall produce or make the following available for inspection and copying, along with its Initial Disclosures:

(1) documents sufficient to show the most recent operation and construction of any aspects or elements of each accused apparatus, product, device, process, method or other instrumentality identified with specificity in the pleading of the party asserting patent infringement; and

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

LPR 2.2 Initial Infringement Contentions

A party claiming patent infringement must serve on all parties “Initial Infringement Contentions” containing the following information within fourteen (14) days after the Initial Disclosure under LPR 2.1:

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

(b) separately for each asserted claim, identification of each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of the opposing party of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

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

(e) for each claim alleged to have been indirectly infringed, identification of at least one direct infringer and a description of the acts of infringement;

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

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

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

LPR 2.3 Initial Non-Infringement, Unenforceability and Invalidity Contentions

Each party opposing a claim of patent infringement or asserting invalidity or unenforceability shall serve upon all parties its “Initial Non-Infringement, Unenforceability and Invalidity Contentions” within fourteen (14) days after service of the Initial Infringement Contentions. Such Initial Contentions shall be as follows:

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 2.2(c), that identifies as to each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.

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

(1) identification, with particularity, of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

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

(3) a chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) a detailed statement of any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1).

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

LPR 2.4 Document Production Accompanying Initial Invalidation Contentions

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

(a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 2.2 chart; and

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

LPR 2.5 Initial Response to Invalidity Contentions

Within fourteen (14) days after service of the Initial Non-Infringement and Invalidity Contentions under LPR 2.4, each party claiming patent infringement shall serve upon all parties its “Initial Response to Invalidity Contentions.” The Initial Response to Invalidity Contentions shall contain a chart, responsive to the chart required by LPR 2.3(a)-(d), that states as to each identified element in each asserted claim, to the extent then known, whether the party admits to the identity of elements in the prior art and, if not, the reason for such denial.

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

In a case initiated by a complaint for declaratory judgment in which a party files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 2.2 and 2.3 shall not apply unless a party makes a claim for patent infringement. If no claim of infringement is made, the party seeking a declaratory judgment must comply with LPR 2.3 and 2.4 within twenty-eight (28) days after the Initial Disclosures.

3. FINAL CONTENTIONS

LPR 3.1 Final Infringement Contentions

A party claiming patent infringement must serve on all parties “Final Infringement Contentions” containing the information required by LPR 2.2 (a)–(h) within eighteen (18) weeks after the due date for the exchange of Initial Infringement Contentions.

LPR 3.2 Final Non-infringement, Unenforceability and Invalidity Contentions

Each party asserting non-infringement, invalidity or unenforceability of a patent claim shall serve on all other parties “Final Non-infringement, Unenforceability and Invalidity Contentions” within twenty-eight (28) days after service of the Final Infringement Contentions, containing the information called for in LPR 2.3(a)-(c).

LPR 3.3 Document Production Accompanying Final Invalidity Contentions

With the Final Invalidity Contentions, the party asserting invalidity of any patent claim shall produce or make available for inspection and copying: a copy or sample of all prior art identified pursuant to LPR 3.2, to the extent not previously produced, that does not appear in the file history of the patent(s) at issue. If any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

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

LPR 3.4 Amendment of Final Contentions

A party may amend its Final Infringement Contentions or Final Non-infringement and Invalidity Contentions only by order of the Court upon a showing of good cause and absence of unfair prejudice, made in timely fashion following discovery of the basis for the amendment.

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

LPR 3.5 Final Date to Seek Stay Pending Reexamination

Absent exceptional circumstances, no party may file a motion to stay the lawsuit pending reexamination in the U.S. Patent Office after the due date for service of that party's Final Contentions.

4. CLAIM CONSTRUCTION PROCEEDINGS

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

(a) Within fourteen (14) days after service of the Final Invalidity Contentions pursuant to LPR 3.2, each party shall serve a list of (i) the claim terms and phrases the party contends the Court should construe; (ii) the party's proposed constructions; (iii) identification of any claim element that the party contends is governed by 35 U.S.C. § 112(6); and (iv) the party's description of the function of that element, and the structure(s), act(s), or material(s) corresponding to that element.

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

Comment

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

LPR 4.2 Claim Construction Briefs

(a) Within twenty-eight (28) days after the exchange of terms set forth in LPR 4.1, the parties opposing infringement shall file their Opening Claim Construction Brief, which may not exceed twenty-five (25) pages absent prior leave of court. The brief shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence the party contends supports its proposed claim construction. If a party offers the testimony of a witness to support its claim construction, it must include with its brief a sworn declaration setting forth the substance of the witness's proposed testimony.

(b) On the date for filing the Opening Claim Construction Brief, the parties shall file a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. The prosecution history must be paginated, and all parties must cite to the Joint Appendix when referencing the materials it contains. Any party may file a separate appendix to its claim construction brief containing other supporting materials.

(c) Within twenty-eight (28) days after filing of the Opening Claim Construction brief, the parties claiming infringement shall file their Responsive Claim Construction Brief, which may not exceed twenty-five (25) pages absent prior leave of Court. The brief shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence the party contends supports its proposed claim construction. If a party offers the testimony of a witness to support its claim construction, it must include with its brief a sworn declaration setting forth the substance of the witness's proposed testimony. The brief shall also describe all objections to any extrinsic evidence identified in the Opening Claim Construction Brief.

(d) Within fourteen (14) days after filing of the Responsive Claim Construction Brief, the parties opposing infringement shall file their Reply Claim Construction Brief, which may not exceed fifteen (15) pages absent prior leave of Court. The brief shall describe all objections to any extrinsic evidence identified in the Opening Claim Construction Brief.

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

(f) With seven (7) days after filing of the Reply Claim Construction Brief, the parties shall file (1) a joint claim construction chart that sets forth each claim term and phrase addressed in the claim construction briefs; each party's proposed construction, and (2) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing pursuant to LPR 4.3.

Comment

The committee opted for consecutive claim construction briefs rather than simultaneous briefs, concluding that consecutive briefing is more likely to promote a meaningful exchange regarding the contested points. For the same reason, the committee opted to have the alleged infringer file the opening claim

construction brief. Patent holders are more likely to argue for a “plain meaning” construction or for non-construction of disputed terms; alleged infringers tend to be less likely to do so.

The Rules provide for three briefs (opening, response, and reply), not four, due to the likelihood of a claim construction hearing or argument. The Court’s determination not to hold a hearing or argument may constitute a basis to permit a reply brief by the patent holder.

LPR 4.3 Claim Construction Hearing

Unless the Court orders otherwise, a claim construction oral argument or hearing may be held within twenty-one (21) days after filing of the Reply Claim Construction Brief. Either before or after the filing of claim construction briefs, the Court shall issue an order describing the schedule and procedures for a claim construction hearing.

5. EXPERT WITNESSES

LPR 5.1 Disclosure of Experts and Expert Reports

Unless the Court orders otherwise,

(a) for issues other than claim construction to which expert testimony shall be directed, expert witness disclosures and depositions shall be governed by this Rule;

(b) within twenty-one (21) days after the close of discovery after the claim construction ruling, each party shall make its initial expert witness disclosures required by Federal Rule of Civil Procedure 26 on issues for which it bears the burden of proof;

(c) within thirty-five (35) days after the date for initial expert reports, each party shall make its rebuttal expert witness disclosures required by Federal Rule of Civil Procedure 26 on the issues for which the opposing party bears the burden of proof.

LPR 5.2 Depositions of Experts

Depositions of expert witnesses shall be completed within thirty-Five (35) days after exchange of expert rebuttal disclosures.

LPR 5.3 Presumption Against Supplementation of Reports

Amendments or supplementation to expert reports after the deadlines provided herein are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced.

6. DISPOSITIVE MOTIONS

LPR 6.1 Final Day for Filing Dispositive Motions

All dispositive motions shall be filed within twenty-eight (28) days after the scheduled date for the end of expert discovery.

APPENDIX A

- (a) <Dates for supplementations under Rule 26(c).>
- (b) <A date if the parties ask to meet with the court before a scheduling order.>
- (c) <Requested dates for pretrial conferences.>
- (d) <Final dates for the plaintiff to amend pleadings or to join parties.>
- (e) <Final dates for the defendant to amend pleadings or to join parties.>
- (f) <Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.>
- (g) <Final dates to file objections under Rule 26(a)(3).>
- (h) Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until <date>, provided that all relevant privileged documents are produced no later than <date>. All additional discovery regarding the waiver will take place after <date> and shall be completed by <date>.

7. Other Items:

- (a) <State the prospects for settlement.>
- (b) <Identify any alternative dispute resolution procedure that may enhance settlement prospects.>
- (c) Anything shown or told to a testifying expert relating to the issues on which he/she opines, or to the basis or grounds in support of or countering the opinion, is subject to discovery by the opposing party.
- (d) The parties agree that drafts of expert reports [will/will not] be retained and produced;
- (e) In responding to discovery requests, each party shall construe broadly terms of art used in the patent field (e.g., “prior art”, “best mode”, “on sale”), and read them as requesting discovery relating to the issue as opposed to a particular definition of the term used. Compliance with this provision is not satisfied by the respondent including a specific definition of the term in its response, and limiting the response to that definition.
- (f) The parties [agree/do not agree] the video “An Introduction to the Patent System” distributed by the Federal Judicial Center, should be shown to the jurors in connection with its preliminary jury instructions.
- (g) <Other matters.>

Date: <Date>

<Signature of the attorney or unrepresented party>

<Printed name>
 <Address>
 <E-mail address>
 <Telephone number>

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

_____,)
Plaintiff(s))
)
v.)
) Case No. _____
_____,)
Defendant(s))

PROTECTIVE ORDER

The Court enters the following protective order pursuant to Federal Rule of Civil Procedure 26(c)(1).

1. Findings: The Court finds that the parties to this case may request or produce information involving trade secrets or confidential research and development or commercial information, the disclosure of which is likely to cause harm to the party producing such information.

2. Definitions:

(a) “Party” means a named party in this case. “Person” means an individual or an entity. “Producer” means a person who produces information via the discovery process in this case. “Recipient” means a person who receives information via the discovery process in this case.

(b) “Confidential” information is information concerning a person’s business operations, processes, [and] technical and development information, [and *fill in particular type(s) of information*], the disclosure of which is likely to harm that person’s competitive position, or the disclosure of which would contravene an obligation of confidentiality to a third person or to a Court.

(c) [“Highly Confidential” information is information concerning *[fill in particular type(s) of information]*, the disclosure of which is likely to harm that person’s competitive position, or the disclosure of which would contravene an obligation of confidentiality to a third person or to a Court.]

(d) [c./d.] Information is not Confidential [or Highly Confidential] if it is disclosed in a printed publication, is known to the public, was known to the recipient without obligation of confidentiality before the producer disclosed it, or is or becomes known to the recipient by means not constituting a breach of this Order. Information is likewise not Confidential [or Highly Confidential] if a person lawfully obtained it independently of this litigation.

3. Designation of information as Confidential [or Highly Confidential]:

(a) A person’s designation of information as Confidential [or Highly Confidential] means that the person believes in good faith, upon reasonable inquiry, that the information qualifies as such.

(b) A person designates information in a document or thing as Confidential [or Highly Confidential] by clearly and prominently marking it on its face as “CONFIDENTIAL” [or “HIGHLY CONFIDENTIAL”]. A producer may make documents or things containing Confidential [or Highly Confidential] information available for inspection and copying without marking them as confidential without forfeiting a claim of confidentiality, so long as the producer causes copies of the documents or things to be marked as Confidential [or Highly Confidential] before providing them to the recipient.

(c) A person designates information in deposition testimony as Confidential [or Highly Confidential] by stating on the record at the deposition that the information is Confidential [or Highly Confidential] or by advising the opposing party and the stenographer

[and videographer] in writing, within fourteen days after receipt of the deposition transcript, that the information is Confidential [or Highly Confidential].

(d) A person's failure to designate a document, thing, or testimony as Confidential [or Highly Confidential] does not constitute forfeiture of a claim of confidentiality as to any other document, thing, or testimony.

(e) A person who has designated information as Confidential [or Highly Confidential] may withdraw the designation by written notification to all parties in the case.

(f) If a party disputes another person's designation of information as Confidential [or Highly Confidential], the party shall notify the producer in writing of the basis for the dispute. The party and the producer shall then meet and confer to attempt to resolve the dispute without involvement of the Court. If they cannot resolve the dispute, the party disputing the designation may, within a reasonable time, move the Court to remove the designation. The producer bears the burden of proving that the information is properly designated as Confidential [or Highly Confidential]. The information shall remain subject to the Confidential [or Highly Confidential] designation until the Court rules on the dispute. A party's failure to contest a designation of information as Confidential [or Highly Confidential] is not an admission that the information was properly designated as such.

4. Use and disclosure of Confidential [or Highly Confidential] information:

(a) Confidential [and Highly Confidential] information may be used exclusively for purposes of this litigation, subject to the restrictions of this order.

(b) Absent written permission from the producer or further order by the Court, the recipient may not disclose Confidential information to any person other than the following: (i) a party's outside counsel of record, including necessary paralegal, secretarial and clerical

personnel assisting such counsel; (ii) a party's in-house counsel; (iii) a party's officers and employees directly involved in this case whose access to the information is reasonably required to supervise, manage, or participate in this case; (iv) a stenographer [or videographer] recording testimony concerning the information; (v) subject to the provisions of paragraph [4(c) / 4(d)] of this order, experts and consultants and their staff whom a party employs for purposes of this litigation only; and (vi) the Court and personnel assisting the Court.

(c) [Absent written permission from the producer or further order by the Court, the recipient may not disclose Highly Confidential information to any person other than those identified in paragraph 4(b)(i), (iv), (v), and (vi).]

(d) [c./d.] A party may not disclose Confidential [or Highly Confidential] information to an expert or consultant pursuant to paragraph 4(b) [or 4(c)] of this order until after the expert or consultant has signed an undertaking in the form of Appendix I to this Order. The party obtaining the undertaking must serve it on all other parties within ten days after its execution. At least ten days before the first disclosure of Confidential [or Highly Confidential] information to an expert or consultant (or member of their staff), the party proposing to make the disclosure must serve the producer with a written identification of the expert or consultant and a copy of his or her curriculum vitae. If the producer has good cause to object to the disclosure (which does not include challenging the qualifications of the expert or consultant), it must serve the party proposing to make the disclosure with a written objection within ten days after service of the identification. Unless the parties resolve the dispute within ten days after service of the objection, the producer must move the Court promptly for a ruling, and the Confidential [or Highly Confidential] information may not be disclosed to the expert or consultant without the Court's approval.

(e) [d./e.] Notwithstanding paragraph 4(a) [and (b)], a party may disclose Confidential [or Highly Confidential] information to: (i) any employee or author of the producer; (ii) any person, no longer affiliated with the producer, who authored the information in whole or in part; and (iii) any person who received the information before this case was filed.

(f) [e./f.] A party who wishes to disclose Confidential [or Highly Confidential] information to a person not authorized under paragraph 4(b) [or 4(c)] must first make a reasonable attempt to obtain the producer's permission. If the party is unable to obtain permission, it may move the Court to obtain permission.

5. Copies: A party producing documents as part of discovery must, upon request, furnish the requesting party with one copy of the documents it requests, at the requesting party's expense. Before copying, the parties must agree upon the rate at which the requesting party will be charged for copying.

6. Inadvertent Disclosure: Consistent with Federal Rule of Evidence 502, the inadvertent production of any information claimed to be subject to the attorney-client privilege, the work-product doctrine, or any other privilege is not a waiver of that privilege or protection, so long as the holder of the privilege took reasonable steps to prevent disclosure and took reasonable steps to rectify the error. Upon reasonably prompt written request of the person that produced such information, the receiver of such information must promptly return the information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim.

7. Filing with the Court: No Confidential [or Highly Confidential] information may be included in a document publicly filed with the Court (including documents filed electronically) unless the Court so orders. *[Alternative 1: This order constitutes authorization for filing under seal documents containing Confidential [or Highly Confidential] information.]* *[Alternative 2: A party wishing to file a document containing Confidential [or Highly Confidential] information must move the Court, prior to the due date for the document, for permission to file the document under seal.]* If a party obtains permission to file a document under seal, it must also (unless excused by the Court) file a public-record version that excludes any Confidential [or Highly Confidential] information.

Pursuant to Local Rule 5.8, any document filed under seal must be accompanied by a cover sheet disclosing (i) the caption of the case, including the case number; (ii) the title “Restricted Document Pursuant to Local Rule 26.2;” (iii) a statement that the document is filed as restricted in accordance with a court order and the date of the order; and (iv) the signature of the attorney of record filing the document.

8. Document Disposal: Upon the conclusion of this case, each party must return to the producer all documents and copies of documents containing the producer’s Confidential [or Highly Confidential] information, except for copies containing notes or other work product of the party’s attorney, which the party must promptly destroy. Alternatively, if the producer agrees, the party may destroy all documents and copies of documents containing the producer’s Confidential [or Highly Confidential] information. The party returning and/or destroying the producer’s Confidential [and Highly Confidential] information must promptly certify in writing its compliance with the requirements of this paragraph. Notwithstanding the requirements of this

paragraph, a party and its counsel may retain one complete set of all documents filed with the Court, remain subject to all requirements of this order.

9. Originals: A legible photocopy of a document may be used as the “original” for all purposes in this action. The actual “original,” in whatever form the producing party has it, must be made available to any other party within ten days after a written request.

10. Survival of obligations: This order’s obligations regarding Confidential [and Highly Confidential] information that this order imposes survive the conclusion of this case.