

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**Plaintiff**  
**v.**  
**Defendant**

**Case Number**

**CASE MANAGEMENT REPORT**

The parties have agreed on the following dates and discovery plan pursuant to Fed.R.Civ.P. 26(f) and Local Rule 3.05(c):

DEADLINE OR EVENT	AGREED DATE
Mandatory Initial Disclosures (pursuant to Fed.R.Civ.P. 26(a)(1)) including disclosure of Asserted Claims [Court recommends 30 days after CMR meeting]	
Certificate of Interested Persons and Corporate Disclosure Statement [each party who has not previously filed must file immediately]	
Motions to Add Parties or to Amend Pleadings [Court recommends 4 months after CMR meeting]	
Disclosure of Infringement Contentions [Court recommends 2 months after CMR meeting]	
Disclosure of Non-Infringement and Invalidity Contentions [Court recommends 3 months after CMR meeting]	
Initial Identification of Disputed Claim Terms [Court recommends 3 ½ months after CMR meeting]	
Proposed Claim Term Constructions [Court recommends 4 ½ months after CMR meeting]	
Disclosure of Intent to Rely on Advice of Counsel as a Defense [Court recommends 1 week after Proposed Claim Term Constructions]	
Joint Claim Construction Statement [Court recommends 2 weeks after the Proposed Claim Term Constructions]	

DEADLINE OR EVENT	AGREED DATE
Technology Tutorial Conference [Court recommends 2 weeks after the Joint Claim Construction Statement]	
Plaintiff's Claim Construction Brief [Court recommends 6 weeks after the Joint Claim Construction Statement]	
Defendant's Response Brief [Court recommends 2 weeks after Plaintiff's Brief]	
Joint Pre-Hearing Statement [Court recommends 1 week after Defendant's Brief]	
Claim Construction Hearing [Court recommends 3 weeks after the Joint Pre-Hearing Statement]	
Amending Infringement, Non-Infringement, and Invalidity Contentions [Court recommends 3 months after the Claim Construction Hearing]	
Fact Discovery Deadline [Court recommends 4 weeks after Amending Infringement, Non-Infringement, and Invalidity Contentions]	
Disclosure of Expert Reports on Issues Where the Party Bears the Burden of Proof [Court recommends 4 weeks after the Fact Discovery Deadline]	
Disclosure of Rebuttal Expert Reports [Court recommends 4 weeks after Disclosure of Expert Reports]	
Expert Discovery Deadline [Court recommends 4 weeks after Disclosure of Expert Rebuttal Reports]	
Dispositive Motions, <i>Daubert</i> , and <i>Markman</i> Motions [Court recommends 4 weeks after the Expert Discovery Deadline and requires 5 months or more before trial term begins]	
Meeting <i>In Person</i> to Prepare Joint Final Pretrial Statement [20 days before Joint Final Pretrial Statement]	
Joint Final Pretrial Statement ( <i>Including</i> a Single Set of Jointly-Proposed Jury Instructions and Verdict Form, Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form) [Court recommends 5 weeks before Trial]	

DEADLINE OR EVENT	AGREED DATE
All Other Motions Including Motions <i>In Limine</i> (Each Party is limited to one Motion in Limine that does not exceed 25 pages without leave of Court. Responses are limited to 20 pages without leave of Court.) [Court recommends 7 weeks before Trial]	
Trial Term Begins [Local Rule 3.05 (c)(2)(E) sets goal of trial within 2 years of filing complaint in all Track Two cases; district judge trial terms begin on the first business day of each month; trials before magistrate judges will be set on a date certain after consultation with the parties]	
Estimated Length of Trial [trial days]	
Jury / Non-Jury	
<div>Mediation</div> <div>Deadline: Mediator: Address:</div> <div>Telephone:</div> <p>Mediation is MANDATORY. Court recommends it take place shortly after the discovery deadline. IF THE PARTIES DO NOT SELECT A MEDIATOR, THE COURT <i>WILL</i> APPOINT ONE FROM ITS LIST OF CERTIFIED MEDIATORS.</p>	
All Parties Consent to Proceed Before Magistrate Judge	Yes _____ No _____ Likely to agree in future _____

#### PATENT INFORMATION:

##### A. Disclosure of Infringement Contentions:

A party making infringement contentions must serve on the opposing party, but not file with the Court, disclosures of the following information:

1. The party shall disclose each asserted claim of infringement.
2. The party shall disclose the identity of each accused device.<sup>1</sup> This identification shall

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<sup>1</sup> The Court refers to every allegedly infringing device, method, or service as an “accused device”

be as specific as possible. The party shall identify each accused device by name or model number, if known.

3. For each element of each asserted claim, the party shall disclose its contentions as to how each element of each claim is found in each accused device.

4. For each element of each asserted claim that the party contends is governed by 35 U.S.C. § 112 ¶ 6, the party shall disclose the function and structure of each element and where the function and structure is disclosed in the specification. The party shall also disclose the identity of the structure(s), act(s), or material(s) in each accused device that performs the claims function.

5. The party shall disclose whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the accused device.

#### **B. Disclosure of Non-Infringement and Invalidity Contentions**

Any party asserting non-infringement, invalidity, or unenforceability claims or defenses must serve on the opposing party, but not file with the Court, disclosure containing the following:

1. The party shall disclose the factual basis for any allegation that it does not infringe the patent(s)-in-suit either literally or under the doctrine of equivalents, and shall identify what elements it believes are not present in the accused devices and why an equivalent is not present.

2. The party shall disclose each item of prior art that forms the basis of any allegation of invalidity by reason of anticipation or obviousness. As for prior art that is a document, the party shall provide a copy of the document to the opposing party. As to prior art that is not documentary in nature, such prior art shall be identified with particularity (by the “who, what, when, and where,” etc.) as to the publication date, sale date, use date, source, ownership, inventorship, conception, and any other pertinent information that forms the basis of the party’s invalidity contentions.

3. The party shall disclose whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, then each such combination and reason why a person of ordinary skill in the art would combine such items shall be

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throughout this Order.

identified.

4. For each element of each asserted claim that the party contends is governed by 35 U.S.C. § 112 ¶ 6, the party shall disclose the function and structure of each element and where the function and structure is disclosed in the specification. The party shall also disclose where the prior art identifies the structure(s), act(s), or material(s) in each prior art that performs the claimed function.

5. For any grounds of invalidity based on 35 U.S.C. § 112 or other defenses, the party shall provide its reasons and evidence as to why the claims are invalid or the patent unenforceable, making specific reference to relevant portions of the specification or claims or prosecution history. Such positions shall be made in good faith.

**C. Initial Identification of Disputed Claim Terms**

Lead counsel for the parties shall meet and confer in person to determine which claim terms may need to be interpreted by the Court, not to exceed no more than 10 claim terms.

**D. Proposed Claim Term Constructions**

The parties shall exchange, but not file with the Court, a list of each party's proposed interpretation of the disputed claim terms, along with citations to the intrinsic evidence (*e.g.*, patent prosecution history, dictionary definitions, etc.) that support its interpretation, along with a brief summary of any testimony that is expected to be offered to support that interpretation.

**E. Disclosure of Intent to Rely on Advice of Counsel as a Defense**

Any party that will rely on advice of counsel as a defense must serve on the opposing party disclosures of the following:

1. The party shall produce or make available for inspection and copying documents relating to the opinion(s) of counsel as to which the party agrees the attorney-client privilege has been waived.

2. The party shall serve on the opposing party a privilege log identifying any other documents relating to the opinion(s) of counsel, except those authored by counsel acting solely as trial counsel, which the party withholds on the grounds of attorney-client privilege or work product

protection.

The Court **will not** permit any party that fails to make the above disclosures relating to an opinion of counsel to rely on that opinion of counsel at trial absent a stipulation of the parties.

**F. Joint Claim Construction Statement**

After exchanging the list discussed above (under “Proposed Claim Term Constructions”), lead counsel for the parties shall meet and confer in person about the claim terms in dispute. During this conference, the parties shall narrow and finalize the claim terms that need to be interpreted by the Court. If the parties determine that a claim construction hearing is not necessary, they shall notify the Court in a timely manner. The parties shall file a Joint Claim Construction Statement, including intrinsic evidence, extrinsic evidence, and a summary of expert testimony, if any. The parties shall submit to the Court a chart with up to 10 claim terms; each party’s construction of each claim term; and the relevance of the construction of each claim term for summary judgment. The joint claim construction statement shall not exceed twenty (20) pages. The Court **will not** permit the presentation of argument or testimony at trial about any disputed claim term that was not identified in the parties’ Joint Claim Construction Statement.

**G. Technology Tutorial Conference**

If requested by the parties, or ordered by the Court, a non-adversarial tutorial conference will be scheduled for no later than fourteen (14) days after the deadline for the Joint Claim Construction Statement. At the technology tutorial conference, the counsel for the parties shall explain the technology at issue in the litigation, but they **shall not** pre-argue their claim construction positions to the Court, except to point out to the Court the context of the dispute.

**H. Plaintiff’s Claim Construction Brief**

Plaintiff’s claim construction brief shall not exceed thirty (30) pages without leave of the Court.

**I. Defendant’s Response Brief**

Defendant’s response brief shall not exceed thirty (30) pages without leave of the Court.

**J. Joint Pre-Hearing Statement**

Lead counsel for the parties shall confer about the claim construction hearing and file with the Court a Joint Pre-Hearing Statement informing the Court of the claim terms that will be discussed and the witnesses that will be called. The parties shall also submit a four-column claim interpretation chart in the form attached hereto. The joint pre-hearing statement shall not exceed four (4) pages, not including the Exhibit.

**K. Amending Infringement, Non-Infringement, and Invalidity Contentions**

Amendments to infringement, non-infringement, or invalidity contentions shall be made in accordance with Federal Rule of Civil Procedure 26(e) upon learning that the contention is incomplete or incorrect. Any amendment to a party's infringement contentions must be timely made but in no event later than thirty (30) days after the Court's claim construction ruling. Any amendment to a party's non-infringement or invalidity contentions must be timely made but in no event later than fifty (50) days after the Court's claim construction ruling.

**I. Meeting of Parties in Person**

Lead counsel must meet *in person* and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location.

Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A),<sup>2</sup> a meeting was held in person on

\_\_\_\_\_ (date) at \_\_\_\_\_ (time) at \_\_\_\_\_ (place) and was attended by:

Name

Counsel for (if applicable)

**II. Pre-Discovery Initial Disclosures of Core Information**

**Fed.R.Civ.P. 26(a)(1)(A) - (D) Disclosures**

Fed.R.Civ.P. 26 provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (Rule 26 supersedes

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<sup>2</sup>A copy of the Local Rules may be viewed at <http://www.flmd.uscourts.gov>.

Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties \_\_\_\_ have exchanged \_\_\_\_ agree to exchange (check one)

information described in Fed.R.Civ.P. 26(a)(1)(A) - (D)

on \_\_\_\_\_ by \_\_\_\_\_ (check one)

\_\_\_\_\_ (date).

Below is a description of information disclosed or scheduled for disclosure, including electronically stored information as further described in Section III below.

### **III. Electronic Discovery**

The parties have discussed issues relating to disclosure or discovery of electronically stored information ("ESI"), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

\_\_\_\_ No party anticipates the disclosure or discovery of ESI in this case;

\_\_\_\_ One or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:

A. The form or forms in which ESI should be produced.

B. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.



D. The various sources of ESI within a party's control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

E. The characteristics of the party's information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party's computer systems.

F. Any issues relating to preservation of discoverable ESI.

G. Assertions of privilege or of protection as trial-preparation materials, including whether the parties can facilitate discovery by agreeing on procedures and, if appropriate, an Order under the Federal Rules of Evidence Rule 502. If the parties agree that a protective order is needed, they shall file a motion and attach a copy of the proposed order to the motion. The parties should attempt to agree on protocols that minimize the risk of waiver. Any protective order shall comply with Local Rule 1.09 and Section IV. F. below on Confidentiality Agreements.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Please state if there are any areas of disagreement on these issues and, if so, summarize the parties' position on each: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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If there are disputed issues specified above, or elsewhere in this report, then (check one):

☐ One or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

**If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed. R. Civ. P.**

☐ All parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

#### **IV. Agreed Discovery Plan for Plaintiffs and Defendants**

##### **A. Certificate of Interested Persons and Corporate Disclosure Statement —**

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

☐ Yes

\_\_\_\_\_ No

Amended Certificate will be filed by \_\_\_\_\_ (party) on  
or before \_\_\_\_\_ (date).

**B. Discovery Not Filed —**

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests via electronic means. See Local Rule 3.03(e). The parties further agree as follows:

**C. Limits on Discovery —**

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A); Local Rule 3.02. Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

**1. Depositions**

2. Interrogatories

3. Document Requests

4. Requests to Admit

5. Supplementation of Discovery

**D. Discovery Deadline —**

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows:

**E. Disclosure of Expert Testimony —**

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony:

**F. Confidentiality Agreements —**

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. See Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows:

**G. Other Matters Regarding Discovery —**

**V. Settlement and Alternative Dispute Resolution.**

**A. Settlement —**

The parties agree that settlement is

\_\_\_\_\_ likely \_\_\_\_\_ unlikely (check one)

The parties request a settlement conference before a United States Magistrate Judge.

yes \_\_\_\_\_ no \_\_\_\_\_ likely to request in future \_\_\_\_\_

**B. Arbitration —**

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

yes \_\_\_\_\_ no \_\_\_\_\_ likely to agree in future \_\_\_\_\_  
\_\_\_\_\_ Binding \_\_\_\_\_ Non-Binding

**C. Mediation —**

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties have agreed on a mediator from the Court's approved list of mediators as set forth in the table above, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court's web site at <http://www.flmd.uscourts.gov>.

**D. Other Alternative Dispute Resolution —**

The parties intend to pursue the following other methods of alternative dispute resolution:



Date: \_\_\_\_\_

Signature of Counsel (with information required by Local Rule 1.05(d)) and Signature of Unrepresented Parties.

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