

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	CASE NO.
)	
)	JUDGE O'MALLEY
Plaintiff,)	
)	
v.)	
)	<u>CASE MANAGEMENT ORDER</u>
)	(Patent Action)
)	
Defendant.)	

The Court held a status conference in this case on _____
at _____. The Court, sets out the following schedule for the next stage of litigation

IT IS ORDERED that:

1. This case is assigned to the **expedited/standard/complex** case management track.
2. This case **is/is not** suitable for electronic filing.
3. The parties **consent/do not consent** to the jurisdiction of a United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c).

4. This case **is/is not** suitable for reference to an Alternative Dispute Resolution (ADR) program. The Court hereby refers this case to **Early Neutral/Evaluation/Mediation/Arbitration**, to occur _____, and to be conducted by _____. Parties with full settlement authority **must attend** these proceedings.

5. **Prior to the Markman Hearing** the following exchanges, submissions, or filings shall occur:

A. **Plaintiff's Claims Chart** – Plaintiff will submit a claims construction chart to defendant regarding the patent currently in suit on or before _____. The claims chart will set forth each of the claims plaintiff asserts have been infringed by defendant's products and/or activities and will state, briefly, what plaintiff contends the proper interpretation of each of those claims to be. As to each claim plaintiff contends has been infringed, plaintiff will identify each allegedly infringing product or activity.

B. **Defendant's Response to Plaintiff's Claims Chart** – Defendant will respond in writing to plaintiff's claims chart on or before _____, stating whether and to what extent defendant agrees with plaintiff's proposed claims construction. Where defendant differs with plaintiff's claims construction, defendant will briefly set forth its alternative construction of the relevant claim language.

C. **Joint Claims Chart** – The parties will submit a joint claims construction chart to the Court, identifying areas of agreement and areas of dispute on or before _____.

D. **Markman Briefs** – The parties will submit simultaneous briefs regarding any disputed claims construction issues on or before _____.

The parties will inform the court in conjunction with these filings whether they believe expert testimony will be necessary at the claims construction stage and, if so, who the parties anticipate using as experts, specifically identifying their areas of expertise and the anticipated scope of their testimony; a copy of the curriculum vitae for any proposed expert must be submitted to the Court at this time.

E. **Markman Hearing** – The Court will conduct a claims construction hearing beginning at _____ on _____.

6. The parties may conduct discovery regarding claims construction issues at any time prior to the claims construction hearing, and are encouraged to complete all such discovery at the earliest possible opportunity. Discovery relating to the areas indicated by an “X” below will be stayed until after the completion of the claims construction hearing:

- a) _____ damages
- b) _____ willfulness
- c) _____ inequitable conduct
- d) _____ other: _____

7. **Non-Expert Discovery** shall be completed on or before _____.

Discovery shall be conducted according to the guidelines set forth in Local Rule 16.2(a) for cases assigned to the case management track referred to in item no. 1 above. The Court specifically directs the parties to comply with Local Rule 37.1, including the obligation to

contact the presiding judicial officer by telephone, before filing any motion under Fed. R. Civ. P. 37 seeking aid from the Court in discovery matters.

8. On or before _____, defendant will disclose in writing to plaintiff all prior art which defendant claims invalidates any claim of the patent in suit.

9. **Expert reports** on issues of infringement, damages, and validity shall be submitted to opposing counsel on or before _____, for the party bearing the burden of proof on the issue addressed. Responsive reports are due by _____.

Expert Discovery shall be completed on or before _____.

10. **Filing of Discovery Materials.** Unless otherwise ordered by the Court, initial disclosures, discovery depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk's Office, except that discovery materials may be filed as evidence in support of a motion or for use at trial.

11. The **pleadings shall be amended** and new parties shall be joined on or before _____. Leave of Court is required before an amended pleading will be accepted for filing.

12. **Dispositive motions** shall be filed on or before _____. Motions for summary judgment may be filed at any time authorized under Rule 56, F.R.C.P., but the filing of such motions prior to the completion of discovery relevant to the issues raised is discouraged. The requirements of Rule 56, including those under Rule 56(e) and (f) will be strictly applied.

13. On or before _____, defendant shall notify plaintiff whether it will assert an advice-of-counsel defense to allegations of willful infringement.

14. **Notwithstanding Local Rule 7.1(g)**, the Court sets the following page length limitations: memoranda relating to dispositive motions shall not exceed twenty (20) pages in length for cases assigned to the expedited case management track, thirty (30) pages for standard cases, forty (40) pages for complex cases and fifty (50) pages for mass tort cases. Memoranda relating to all other motions shall not exceed fifteen (15) pages in length. **For purposes of these limits, motions for class certification and briefs relating to the construction of terms in a patent are considered dispositive motions.** Memoranda that exceed these extended page limitations are disfavored and shall not be filed until a motion for permission to exceed page limitations is granted, and in no event shall the request to exceed page limitations extend the time for the filing of the underlying pleading.

15. A single extension of time not to exceed thirty (30) calendar days to respond to discovery requests, and a single extension of time not to exceed fourteen (14) calendar days to file opposition and reply briefs, may be taken by stipulation of the parties, with notice to the Court, and do not require the filing of a motion. **No requests for initial or subsequent extensions of time will be entertained unless they are filed prior to the response date from which extension is sought** and they indicate whether opposing counsel consents or objects to the requested extension. Counsel are strongly encouraged to seek realistic extensions of time. Successive motions for extensions are discouraged.

16. Notice of a **Status Hearing** will be included in the Court's Memorandum and Order regarding claims construction.

17. Beginning forty-five (45) days from the date of this order, counsel shall submit electronically-filed **status reports** every forty-five (45) days during the pendency of this matter. Status reports are to briefly state the following: (1) discovery that has occurred during the

reporting period; (2) whether settlement discussions have occurred during the reporting period; (3) motions that have been filed or remained pending during the reporting period; and (4) any developments that might give rise to a request to deviate from the schedule outlined in this Case Management Plan. These are to be procedural reports; they are not to contain substantive discussions of the merits of any claims or defenses asserted. Failure to file status reports will automatically deprive a party of the right to seek extensions of time to perform any act required under this order or under any applicable federal or local rule of procedure. Repeated failures to file status reports could result in additional sanctions, including dismissal of claims or defenses under Rule 41 (b).

Counsel shall confer in person or by phone within seventy-two (72) hours of any scheduled status conference to outline and, if possible, resolve pending matters before the status conference. Counsel shall provide to the Court (by electronic filing, mail, hand delivery, or fax), no later than twenty-four (24) hours before the status conference, a brief written Status Report describing the status of discovery and setting out issues to be addressed to the Court.

Counsel shall also confer with clients and with each other within seventy-two (72) hours of any status or settlement conference regarding their respective positions with regard to settlement.

While parties need not attend status conferences, they must be readily available by telephone at all times during the course of the conference if they choose not to attend. If a settlement conference is scheduled, parties with full settlement authority must appear, without exception.

IT IS SO ORDERED.

KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE