

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

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**STANDING ORDER GOVERNING PROCEEDINGS (“OGP”) 1.0 – PATENT CASES**

This OGP governs proceedings in all civil cases involving patents (i.e., “patent cases”) pending before the undersigned or Magistrate Judge Derek T. Gilliland and takes effect upon entry. Immediately upon entry of this OGP, the undersigned assigns the case to Magistrate Judge Derek T. Gilliland to handle all pretrial matters pursuant to 28 U.S.C. § 636 and Appendix C of the Local Court Rules for the Assignment of Duties to United States Magistrates. Magistrate Judge Gilliland shall have the authority to issue any preliminary orders and conduct any necessary evidentiary hearings or other appropriate proceedings. Magistrate Judge Gilliland shall submit to the undersigned a report containing proposed Findings of Fact and Recommendations for the disposition of the case.

If the parties consent to the exercise of jurisdiction by Magistrate Judge Gilliland under 28 U.S.C. § 636(c), the parties shall notify the Court by filing the attached Form AO 85 and the case will be placed on the docket of Magistrate Judge Gilliland for all future proceedings, including entry of final judgment.

In the event where Magistrate Judge Gilliland files a Recusal, the case shall be returned to the undersigned and the procedures of this OGP shall still apply.

Parties should generally email any inquiries to the Court’s law clerks, noted below:

[TXWDml\\_NoJudge\\_Chambers\\_WA\\_JudgeGilliland@txwd.uscourts.gov](mailto:TXWDml_NoJudge_Chambers_WA_JudgeGilliland@txwd.uscourts.gov)

[Astrid\\_Fuentes@txwd.uscourts.gov](mailto:Astrid_Fuentes@txwd.uscourts.gov)

[Simon\\_Ciccarillo@txwd.uscourts.gov](mailto:Simon_Ciccarillo@txwd.uscourts.gov)

**I. NOTICE OF READINESS**

In all patent cases pending before the undersigned or Magistrate Judge Gilliland, the parties are directed to jointly file the Case Readiness Status Report (“CRSR”) in the format attached as Appendix B:

(a) within seven days after the Defendant (or at least one Defendant among a group of related Defendants sued together) responds to the initial pleadings in cases where there are no CRSR Related Cases; or (b) when there are CRSR Related Cases, within seven days after the last Defendant (or last Defendant group when at least one Defendant among the group has responded) among the CRSR Related Cases responds to the initial pleadings. The CRSR shall be filed in each case and identify all other CRSR Related Cases. For this Order, cases are CRSR Related Cases when they: (1) are filed within 30 days after the first case is filed; and (2) share at least one common asserted patent.

The parties must meet and confer before jointly filing the CRSR. The Plaintiff is responsible for filing the CRSR on time. If the parties have any pre-*Markman* issues requiring resolution, the parties must email the Court a joint submission of the parties' positions after filing the CRSR so that the Court may consider whether to hold a hearing to resolve the issues.

The Case Management Conference ("CMC") shall occur 14 days after the filing date of the CRSR. If the CRSRs in CRSR Related Cases are not all submitted on the same date, the CMC shall occur 14 days after the last CRSR in the CRSR Related Cases is filed. The Court intends to coordinate the CRSR Related Cases on the same schedule with a single *Markman* hearing, so the parties should plan accordingly. In all cases, the *Markman* hearing shall be initially scheduled for 23 weeks after the CMC and should be included in the parties' proposed Scheduling Order, in accordance with this Order.

## **II. GENERAL DEADLINES**

The following deadlines apply:

1. Patent cases shall be set for a Rule 16 CMC in accordance with the preceding section.
2. Not later than seven days before the CMC: the Plaintiff shall serve a Preliminary Infringement Contentions chart setting forth where, in the accused product(s), each element of the asserted claim(s) is found. The plaintiff must identify the priority date (*i.e.*, the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention; and (2) a copy of the file history for each patent in suit.
3. Two weeks after the CMC: the parties shall file a **motion** to enter an agreed Scheduling Order that generally tracks the model schedule attached as Exhibit A. If the parties cannot agree, the parties shall submit a joint motion for entry of a Scheduling Order briefly setting forth their scheduling disagreement(s). Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other joint filings. When filing any Scheduling Order, the parties shall also jointly send an editable copy to the Court's law clerks.
4. Seven weeks after the CMC: the Defendant shall serve preliminary invalidity contentions in the form of: (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found; (2) an identification of any limitations the Defendant contends are indefinite or lack written description under § 112; and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under § 101. The § 101 contention shall: (1) identify the alleged abstract idea, law of nature, and/or natural phenomenon in each challenged claim; (2) identify each claim element alleged to be well-understood, routine, and/or conventional; and (3) produce prior art for the contention that claim elements are well-understood, routine, and/or conventional to the extent not duplicative of §§ 102 and 103 prior art contentions. The Defendant shall also produce: (1) all prior art referenced in the invalidity contentions; and (2) technical documents, including software where

applicable, sufficient to show the operation of the accused product(s).<sup>1</sup>

### **III. GENERAL DISCOVERY LIMITS**

Except for venue, jurisdictional, and claim construction-related discovery, all other discovery shall be stayed until after the *Markman* hearing. Notwithstanding this general stay of discovery, the Court will permit limited discovery by agreement of the parties, or upon request, where exceptional circumstances warrant it. For example, if discovery outside the United States is contemplated via the Hague, the Court is inclined to allow such discovery before the *Markman* hearing.

Following the *Markman* hearing, the following discovery limits apply. The Court will consider reasonable requests to adjust these limits should circumstances warrant.

1. Interrogatories: 30 per side<sup>2</sup>
2. Requests for Admission: 45 per side
3. Requests for Production: 75 per side
4. Fact Depositions: 70 hours per side (for both party and non-party witnesses combined)
5. Expert Depositions: 7 hours per report<sup>3</sup>

**Electronically Stored Information.** The Court will not require general search and production of email or other electronically stored information (ESI) related to email (such as metadata), absent a showing of good cause. If a party believes targeted email/ESI discovery is necessary, it must propose a procedure identifying custodians and search terms it believes the opposing party should search. The opposing party may propose an alternate plan. If the parties cannot agree, they must contact the Court in accordance with the procedures below to discuss their respective positions.

### **IV. DISCOVERY DISPUTES**

**Procedure.** A party may not file a Motion to Compel Discovery unless: (1) lead counsel with decision-making authority has met and conferred in good faith to resolve the dispute; and (2) the party has contacted the Court's law clerks to summarize the dispute and the parties' respective positions.<sup>4</sup> When contacting the Court's law clerks for discovery or procedural disputes, the following procedures shall apply:

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<sup>1</sup> To the extent it may promote early resolution, the Court encourages the parties to exchange license and sales information, but any such exchange is optional during the pre-*Markman* phase of the case.

<sup>2</sup> A "side" means the Plaintiff (or related Plaintiffs suing together) on the one hand, and the Defendant (or related Defendants sued together) on the other hand. If the Court consolidates related cases for pretrial purposes, a "side" shall be interpreted as if the cases were proceeding individually to calculate limits imposed by this Order. For example, in consolidated cases the Plaintiff may serve up to 30 interrogatories on each Defendant, and each Defendant may serve up to 30 interrogatories on the Plaintiff.

<sup>3</sup> For example, if a single technical expert submits reports on both infringement and invalidity, he or she may be deposed for up to 14 hours total.

<sup>4</sup> The plan outlined below is also the Court's preferred mechanism for handling disputes regarding procedural matters such as extensions of time, excess pages, narrowing claims and prior art, amending invalidity and infringement contentions, etc. If the parties are unsure about whether a particular dispute should be handled by motion or discovery dispute procedure, they should contact the Court's clerks.

If the parties remain at an impasse after lead counsels have met and conferred, the requesting party shall email a summary of the issue(s) and specific relief requested to all counsels of record. The summary of the issue shall not exceed 500 words for one issue or 1,000 words for multiple issues. The responding party has three business days<sup>5</sup> to provide an email response, also not to exceed 500 words for one issue or 1,000 words for multiple issues. The specific relief requested should propose the exact language to be issued in a court order for each part of every disputed issue. The specific relief requested does not count toward the word limit. The Court encourages the parties to provide their submission in a Word document in the following table format:

**Example**

Issue	Requesting Party's Position	Responding Party's Position
RFP 1: All sale records of the Product.	Responding Party didn't produce anything. Responding Party keeps its sales records in a sales database.  Relief: Order that "Responding Party must produce a copy of the sales database within 7 days."	We found no sales records of the Product in the sales database.  Relief: Find that "no documents responsive to RFP 5 exist" and deny Requesting Party's relief.
ROG 5: Identify all employees who worked on the Product.	Responding Party only identified a subset of the employees.  Relief: Order that "Responding Party is compelled to fully respond to ROG 5 by identifying the names and locations of the remaining employees who worked on Product by [date]."	We identified the relevant employees. The other employees are not relevant, and it is too burdensome to identify every employee.  Relief: Order that "Responding Party need not identify any other employees in response to ROG 5."

Once the opposing party provides a response, the requesting party shall email the summaries of the issues to the Court's law clerks with opposing counsel copied. If a hearing is requested, the parties must indicate in the email whether any confidential information will be presented. The Court will then provide guidance to the parties regarding the dispute or arrange a virtual or in-person hearing.

**Written Order.** Within seven days of a discovery hearing, the parties shall email a Joint Proposed Order to the Court's law clerk including the parties' positions from their dispute chart, the parties' requested relief, and the parties' understanding of the Court's ruling so that the arguments and outcome can be docketed. Parties shall send an editable version of the proposed order to the Court's law clerks with any disputed language in red and blue text. **Failure to provide a proposed written order for the docket will result in waiver of the dispute for appeal.**

**V. VENUE & JURISDICTIONAL DISCOVERY**

The Court establishes the following presumptive limits on discovery related to venue and

<sup>5</sup> Excluding weekends and federal holidays.

jurisdiction: each party is limited to five interrogatories, 10 Requests for Production, and 10 hours of deposition testimony. The time to respond to such discovery requests is reduced to 20 days. If a party believes these limits should be expanded, the party shall meet and confer with opposing counsel and, if there is an impasse, the requesting party will contact the Court's law clerks for a telephonic hearing.

Venue or jurisdictional discovery automatically opens upon the filing of an initial venue or jurisdictional motion and shall be completed no later than 10 weeks after the filing of such motions. Parties shall file a notice of venue or jurisdictional discovery if the discovery will delay a response to a transfer or jurisdictional motion.

## **VI. MOTIONS FOR TRANSFER**

Any motion to transfer must be filed within three weeks after the CMC or within eight weeks of receiving or waiving service of the Complaint, whichever is later. Thereafter, a movant must show good cause for any delay and seek leave of court. The deadline for the Plaintiff's Response is two weeks after the completion of venue or jurisdictional discovery. The deadline for the Defendant's Reply is two weeks after the filing of the response.

The following page limits and briefing schedule apply to motions to transfer:

1. Complaint – 15 pages
2. Response – 15 pages, due 14 days after the completion of venue or jurisdictional discovery if conducted; otherwise, 14 days after the Complaint
3. Reply – 5 pages, due 14 days after the Response

All parties that file a motion to transfer should provide the Court with a status report indicating whether the motion has been fully briefed at each of the following times: (1) when the motion to transfer becomes ready for resolution; (2) four weeks before the *Markman* hearing date if the motion to transfer remains unripe for resolution; and (3) if there are multiple *Markman* hearings, six weeks before the first scheduled *Markman* hearing. If by one week before the *Markman* hearing the Court has not ruled on any pending motion to transfer, the moving party is directed to email the Court's law clerks (and the technical advisor, when appointed), and indicate that the motion to transfer is pending.

If a motion to transfer remains pending, the Court will either promptly resolve the pending motion before the *Markman* hearing or postpone the hearing. Whenever a *Markman* hearing is postponed pursuant to this OGP, fact discovery will begin one day after the originally scheduled *Markman* hearing date.

## **VII. MEET AND CONFER REQUIREMENT FOR EARLY MOTIONS TO DISMISS INDIRECT AND WILLFUL INFRINGEMENT**

Any party seeking to dismiss claims of indirect or willful infringement before fact discovery must first meet and confer with the opposing party to discuss dismissing those allegations without prejudice. The party will have leave to re-plead those allegations with specificity if supported by a good faith basis under Rule 11. Under this agreement, the patent owner may re-plead those

allegations within three months after fact discovery opens, and the parties agree to permit fact discovery on indirect and willful infringement during those three months. The party moving to dismiss must attach a Certification of Compliance with this OGP to its motion to dismiss.

An agreement to dismiss under this section shall be filed as a Joint Notice rather than a motion.

### **VIII. INTERIM PROTECTIVE ORDER**

The Court provides a Model Protective Order on its website. Pending entry of the Final Protective Order, the Court issues the following Interim Protective Order to govern the disclosure of confidential information:

If any document or information produced in this matter is deemed confidential by the producing party, and if the Court has not entered a protective order, the document shall be marked “confidential” (or with some similar confidential designation) by the disclosing party. Disclosure of the confidential document or information shall be limited to each parties’ outside attorney(s) of record and the employees of such attorney(s), until the Court enters a protective order.

If a party is not represented by an outside attorney, disclosure of the confidential document or information is limited to one designated “in-house” attorney, whose identity and job functions must be disclosed to the producing party five days prior to any such disclosure to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this OGP shall keep it confidential and use it only for purposes of litigating the case.

### **IX. CLAIM CONSTRUCTION**

#### **Limits for Number of Claim Terms to be Construed**

**Terms for Construction.** The Court will enforce presumed limits on the number of claim terms to be construed. The “presumed limit” is the maximum number of terms that each side may request the Court to construe without further leave of Court. If leave is granted for additional terms to be construed, depending on the complexity and number of terms, the *Markman* hearing may be split into multiple hearings.

The presumed limits based on the number of patents-in-suit are as follows:

<b>1-2 Patents</b>	<b>3-5 Patents</b>	<b>More than 5 Patents</b>
8 terms	10 terms	12 terms

When the parties submit their Joint Claim Construction Statement, in addition to the term and the parties’ proposed constructions, the parties should indicate which proposed a term, or if there was a joint proposal.

#### **Briefing Procedure and Page Limits**

The Court will require non-simultaneous *Markman* briefings with the following default page limits. When exceptional circumstances warrant, the Court will consider reasonable requests to adjust these limits. The page limits apply collectively for coordinated and consolidated cases;

however, the Court will consider reasonable requests to adjust limits in consolidated cases where circumstances warrant. The Court encourages the parties to forego lengthy recitations of legal authorities and focus on the substantive issues unique to each case.

Unless otherwise agreed by the parties, the default order of terms in the parties' briefs shall be based on: (1) the patent number (lowest to highest); (2) the claim number (lowest to highest); and (3) order of appearance within the lowest number patent and claim. An example order may read:

1. 10,000,000 Patent, Claim 1, Term 1
2. 10,000,000 Patent, Claim 1, Term 2 (where Term 2 appears later in the claim than does Term 1)
3. 10,000,000 Patent, Claim 2, Term 3 (where Term 3 appears later in the claim than does Terms 2 and 3)
4. 10,000,001 Patent, Claim 1, Term 4
5. 10,000,001 Patent, Claim 3, Term 5
6. 10,000,002 Patent, Claim 2, Term 6

If the same or similar terms appear in multiple claims, those terms should be ordered by lowest patent number, lowest claim number, and order of appearance within the patent and claim.

<b>Brief</b>	<b>1-2 Patents</b>	<b>3-5 Patents</b>	<b>More than 5 Patents</b>
Opening (Defendant)	20 pages	30 pages	30 pages, plus 5 additional pages for each patent over 5 up to a maximum of 45 pages
Response (Plaintiff)	20 pages	30 pages	30 pages, plus 5 additional pages for each patent over 5 up to a maximum of 45 pages
Reply (Defendant)	10 pages	15 pages	15 pages, plus 2 additional pages for each patent over 5 up to a maximum of 21 pages
Sur-Reply (Plaintiff)	10 pages	15 pages	15 pages, plus 2 additional pages for each patent over 5 up to a maximum of 21 pages

After briefing concludes, the parties shall file a Joint Claim Construction Statement and email an editable copy to the Court's law clerks.

#### **Technology Tutorials and Conduct of the *Markman* Hearing**

Technology tutorials are optional. If the parties submit one, the tutorial should be in electronic

form, with voiceovers, and submitted at least 10 days before the *Markman* hearing. In general, tutorials should be: (1) directed to the underlying technology (rather than argument related to infringement or validity); and (2) limited to 15 minutes per side. The tutorial will not be part of the record, and the parties may not rely on or cite to the tutorial in other aspects of the litigation.

The Court generally sets aside one hour for the *Markman* hearing; however, the Court is open to reserving more or less time, depending on the complexity of the case and input from the parties. As a general rule, the party opposing the Court's preliminary construction begins first. If both parties oppose the Court's preliminary construction, the Plaintiff will begin first.

The Court will provide preliminary constructions to the parties ahead of the *Markman* hearing. At the *Markman* hearing, the Court encourages oral arguments that fine-tune the preliminary constructions over arguments repeated from the briefs.

## **X. GENERAL ISSUES**

1. The Court will entertain reasonable requests to streamline the case schedule and discovery. The parties should contact the Court's law clerks when a change might help streamline the case.
2. The Court may extend the response to the Complaint up to 45 days if agreed by the parties. Extensions beyond 45 days from the filing the original Answer are disfavored and require a motion.
3. Speaking objections during depositions are improper. Objections during depositions shall be stated concisely and in a nonargumentative and nonsuggestive manner. Examples of permissible objections include: "Objection, leading," "Objection, compound," "Objection, vague." Other than to evaluate privilege issues, counsel should not confer with a witness while a question is pending. Counsel may confer with witnesses during breaks in a deposition without waiving any otherwise applicable privilege.
4. Within 10 days of any new changes relevant to AO 120 (Report on the Filing or Determination of an Action Regarding a Patent or Trademark), the Plaintiff must update the form with any new changes to the case, such as amended complaints or new claims.
5. The Plaintiff must file a notice informing the Court when an IPR is filed, the expected time for an institution decision, and the expected time for a final written decision, within two weeks of the filing of the IPR.
6. After the trial date is set, the Court will not move the trial date except in extreme situations. If a party believes that the circumstances warrant a continuance, the parties should contact the Court's law clerks.
7. The Court does not limit the number of Motions for Summary Judgment (MSJs) or *Daubert* motions<sup>6</sup> a party may file. Absent leave of Court, the cumulative page limit for opening briefs for all MSJs is 40 pages per side, for all *Daubert* motions is 40 pages per

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<sup>6</sup> Including any motion filed after opening expert reports that seeks to strike or preclude any part of an expert report for any reason, including procedural reasons.



side, and for all MILs is 15 pages per side. Each responsive MSJ, *Daubert* motion, and MIL is limited to the pages utilized in the opening brief or by the local rules, whichever is greater. The cumulative pages for responsive briefs shall be no more than cumulative pages utilized in the opening briefs. Reply brief page limits shall be governed by the local rules, but in no event shall the cumulative pages of Reply briefs exceed 20 pages per side for all MSJs, 20 pages per side for all *Daubert* motions, and 10 pages for all MILs.

8. The Court no longer requires physical copies of *Markman* briefs, summary judgment motions, and *Daubert* motions. Instead, the parties shall jointly contact the Court's law clerks, at least 10 days before the hearing, for a Box link to provide an electronic copy of the briefs,<sup>7</sup> exhibits, and the optional technology tutorial. Absent agreement to the contrary, the Plaintiff shall be responsible for providing the electronic copies via Box. For *Markman* briefs, the parties should also include a copy of all patents-in-suit and an editable copy of the Joint Claim Construction Statement. If the Court appoints a technical advisor, each party shall deliver the same to the technical advisor on a USB drive 10 days before the hearing.
9. When filing the Joint Claim Construction Statement, proposed Protective Order, or proposed Scheduling Order, the parties must email the Court's law clerks a Word version.
10. For all non-dispositive motions, the parties must submit a proposed Order (omitting the word "Proposed" from the title).
11. Any party who intends to present confidential information in a remote hearing must email and notify the Court's law clerks to request a private, virtual setup.
12. When citing cases or exhibits in a motion, parties must pin cite the sections relied upon. For any motion referencing an expert report (*e.g.*, motions to strike, *Daubert* motions, and summary judgment motions), the Court requires full copies of the expert report attached as an exhibit. The Court also encourages parties to highlight and/or annotate the relied-upon sections of exhibits or expert reports (*e.g.*, patents, transcripts, contracts) to facilitate the Court's analysis of the motion. A supporting declaration should identify if any exhibit is highlighted or annotated.
13. Parties will promptly notify the Court if they reach a settlement and request to stay any deadlines.
14. A pleading, motion, or other submission shall be typed or printed in 12-point or larger font (including footnotes), double-spaced, on paper sized 8½" x 11" with one-inch margins on all sides and shall be endorsed with the style of the case and the descriptive name of the document. Headings, footnotes, and quotations more than two lines long may be single-spaced.
15. With respect to calculating page limits for motions not otherwise addressed in this Order, at least the following are examples of motions the Court considers to be "case management motions" where the 10-page limit applies: Motions to Stay, Motions for Continuance, and Motions to Amend Pleadings, Contentions, or Scheduling Orders.

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<sup>7</sup> If the Court appoints a technical advisor for claim construction, the parties should not provide a copy of the *Markman* briefs to the Court.

**IT IS SO ORDERED.**

**SIGNED** this 11<sup>th</sup> day of October 2024.

A handwritten signature in cursive script, reading "Ernest Gonzalez", written in black ink.

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**ERNEST GONZALEZ**  
UNITED STATES DISTRICT JUDGE

## XII. APPENDIX A – MODEL SCHEDULE

Deadline	Item
8 weeks after receiving or waiving service of complaint or 3 weeks after the CMC, whichever is later.	Deadline to file a motion to transfer. After this deadline, movants must seek leave of Court and show good cause for the delay.
7 days before CMC	The Plaintiff serves preliminary <sup>8</sup> infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) is found. Plaintiff shall also identify the earliest priority date ( <i>i.e.</i> , the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention; and (2) a copy of the file history for each patent in suit.
2 weeks after CMC	Parties shall file a motion to enter an agreed Scheduling Order. If the parties cannot agree, they shall submit a separate Joint Motion for Entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other joint filings.
7 weeks after CMC	The Defendant serves preliminary invalidity contentions in the form of: (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found; (2) an identification of any limitations the Defendant contends are indefinite or lack written description under § 112; and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under § 101. Defendant shall also produce: (1) all prior art referenced in the invalidity contentions; and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).

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<sup>8</sup> The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions, and the amendment is based on material identified after those preliminary contentions were served. The parties should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

9 weeks after CMC	Parties exchange claim terms for construction.
11 weeks after CMC	Parties exchange proposed claim constructions.
12 weeks after CMC	Parties disclose all extrinsic evidence. Extrinsic evidence includes the identity of any expert witness the parties may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. <sup>9</sup> With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
13 weeks after CMC	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
14 weeks after CMC	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
17 weeks after CMC	Plaintiff files Responsive claim construction brief.
19 weeks after CMC	Defendant files Reply claim construction brief.
19 weeks after CMC	Parties email the law clerks ( <i>see</i> OGP at 1) to confirm their <i>Markman</i> date and to notify if any venue or jurisdictional motions remain unripe for resolution.
21 weeks after CMC	Plaintiff files a Sur-Reply claim construction brief.
3 business days after submission of sur-reply	Parties submit Joint Claim Construction Statement and email the law clerks an editable copy.  <i>See</i> General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
22 weeks after CMC (but at least 10 days before <i>Markman</i> hearing)	Parties submit optional technical tutorials to the Court and technical advisor (if appointed).

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<sup>9</sup> Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

23 weeks after CMC (or as soon as practicable) <sup>10</sup>	<i>Markman</i> Hearing. This date is a placeholder, and the Court may adjust this date as the <i>Markman</i> hearing approaches.
1 business day after <i>Markman</i> hearing	Fact Discovery opens; deadline to serve Initial Disclosures under Rule 26(a).
6 weeks after <i>Markman</i> hearing	Deadline to add parties.
8 weeks after <i>Markman</i> hearing	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.
16 weeks after <i>Markman</i> hearing	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. ( <b>Note:</b> This includes amendments in response to a 12(c) motion.)
26 weeks after <i>Markman</i> hearing	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerks to arrange a teleconference with the Court to resolve the disputed issues.
30 weeks after <i>Markman</i> hearing	Close of Fact Discovery.
31 weeks after <i>Markman</i> hearing	Opening Expert Reports.
35 weeks after <i>Markman</i> hearing	Rebuttal Expert Reports.
38 weeks after <i>Markman</i> hearing	Close of Expert Discovery.
39 weeks after <i>Markman</i> hearing	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact

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<sup>10</sup> All deadlines hereafter follow the original *Markman* hearing date and do not change if the Court delays the *Markman* hearing.

	the Court's law clerks for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within five business days regarding the results of the meet and confer.
40 weeks after <i>Markman</i> hearing	Dispositive motion deadline and <i>Daubert</i> motion deadline.  <i>See</i> General Issues Note #9 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
42 weeks after <i>Markman</i> hearing	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations).
44 weeks after <i>Markman</i> hearing	Serve objections to pretrial disclosures/rebuttal disclosures.
45 weeks after <i>Markman</i> hearing	Serve objections to rebuttal disclosures; file motions <i>in limine</i> .
46 weeks after <i>Markman</i> hearing	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations); file oppositions to motions <i>in limine</i>  From this date onwards, the parties are obligated to notify the Court of any changes to the asserted patents or claims. Such notification shall be filed on the docket within seven days of the change and shall include a complete listing of all asserted patents and claims. If a change to the asserted patents or claims requires leave of court, notification shall not be required until the Court grants leave, at which point the notification must be filed within seven days.
47 weeks after <i>Markman</i> hearing	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with, and email, the Court.  Deadline to file replies to motions <i>in limine</i> .

48 weeks after <i>Markman</i> hearing	Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
8 weeks before trial	Parties to jointly email the Court's law clerks ( <i>See</i> OGP at 1) to confirm their pretrial conference and trial dates.
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
49 weeks after <i>Markman</i> hearing (or as soon as practicable)	Final Pretrial Conference (held in person unless otherwise requested).
52 weeks after <i>Markman</i> hearing (or as soon as practicable) <sup>16</sup>	Jury Selection/Trial.

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<sup>16</sup> If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.

### XIII. APPENDIX B – MODEL CASE READINESS STATUS REPORT

#### UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS WACO DIVISION

PLAINTIFF

*Plaintiff,*

v.

DEFENDANT

*Defendant.*

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Case No.: WA:2X-CV-XXXXXX-DTG

#### CASE READINESS STATUS REPORT

Plaintiff [names] and Defendant [name(s)], hereby provide the following status report.

#### SCHEDULE

A scheduling order [has been proposed and awaits entry by the Court, has been issued by the Court, or has not yet been filed].

[Indicate if a *Markman* date has been set, proposed, or not yet proposed.] [Indicate if a trial date has been set, proposed, or not yet proposed.]

#### FILING AND EXTENSION

Plaintiff's Complaint was filed on [filing date]. There have been [one/two] extension[s] for a total of \_\_ days.

#### RESPONSE TO THE COMPLAINT

[Indicate if/when the Defendant(s) responded to the Complaint, whether it was an Answer or Motion, and whether any counterclaims were filed other than counterclaims for non-infringement or invalidity].



### **PENDING MOTIONS**

[Identify all pending motions].

### **RELATED CASES IN THIS JUDICIAL DISTRICT**

[Identify all related cases in this Judicial District, including any other cases where a common patent is asserted].

### **IPR, CBM, AND OTHER PGR FILINGS**

[There are no known IPR, CBM, or other PGR filings.] [Or]

[ALT: IPR2021-00000 was filed on \_\_\_\_\_ and docketed on \_\_\_\_\_. An institution decision is expected on or before \_\_\_\_\_. A Final Written decision is expected on or before \_\_\_\_\_.]

### **NUMBER OF ASSERTED PATENTS AND CLAIMS**

Plaintiff has asserted [Num Patents] patent[s] and a total of [Num Claims] claims. The asserted patent(s) are U.S. Patent Nos. \_\_\_\_\_.

[If a Plaintiff has already served Preliminary Infringement Contentions (“PICs”), note the date of service. Note: Per the Court’s Order Governing Proceeding, Plaintiff must serve PICs no later than 7 days before the CMC].

### **APPOINTMENT OF TECHNICAL ADVISOR**

[Indicate if the Parties request, oppose, or defer to the Court on whether to appoint a technical advisor to the case to assist the Court with claim construction or other technical issues].

### **MEET AND CONFER STATUS**

Plaintiff and Defendant met and conferred. [The Parties have no pre-*Markman* issues to raise at the CMC.] or [The Parties identified the following pre-*Markman* issues to raise at the CMC [list].].

Dated: \_\_\_\_\_

Respectfully Submitted:

/s/ \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION

PLAINTIFF

*Plaintiff,*

v.

DEFENDANT

*Defendant.*

§  
§  
§  
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§  
§

Case No.: **DR:2X-CV-XXXXX-EG**

**ADVISORY FOR A FULL REFERRAL OF CASE**

The undersigned parties, within **14 days** of the receipt of this waiver, to elect as follows (please select only one of the following options):

- ☐ I consent to proceed before a United States Magistrate Judge in accordance with provisions of Title 28 U.S.C. Section 636. The undersigned party in the above-captioned case waives the right to proceed before a United States District Judge and consents to have a United States Magistrate Judge conduct any and all further proceedings in this case, including rendering a decision, and to order the entry of final judgment. Any appeal shall be taken to the United States Court of Appeals for the Fifth Circuit in accordance with Title 28 U.S.C. Section 636(c)(3).
- ☐ I do **not** consent to proceed before a United States Magistrate Judge. The undersigned party in the above-captioned case elects not to have this case decided by a United States Magistrate Judge and prefers that this case proceed before the United States District Judge.

Party or Party Represented

Signature of Party or Party's Attorney

Date

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