

PART III—PATENT PRACTICE

LPR 1-1. TITLE

These are the Local Rules of Practice for Patent Cases before the United States District Court for the District of Nevada.

LPR 1-2. SCOPE AND CONSTRUCTION

These rules apply to all civil actions filed in or transferred to this court that allege infringement of a utility patent in a complaint, counterclaim, cross-claim, or third-party claim, or that seek a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable. The Local Rules of Civil Practice in Part II also apply to these actions, except to the extent that they are inconsistent with these Patent Local Rules. For the purposes of these rules, citations to Title 35 of the United States Code refer to pre-America Invents Act statutes.

LPR 1-3. MODIFICATION OF RULES

The court may apply all or part of these rules to any case already pending on the effective date of these rules. The court may modify the obligations and deadlines of these rules based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the patents, claims, products, or parties involved. Modifications may be proposed by one or more parties at the mandatory Fed. R. Civ. P. 26(f) meeting (“Initial Scheduling Conference”), and then submitted in the stipulated discovery plan and scheduling order. Modifications also may be proposed by request upon a showing of good cause. Before submitting any request for a modification, the parties must meet and confer for purposes of reaching an agreement, if possible, on any modification.

LPR 1-4. CONFIDENTIALITY

Discovery and initial disclosures under these rules cannot be withheld on the basis of confidentiality absent court order. Not later than 14 days after the Initial Scheduling Conference, the parties must file a proposed protective order. Pending entry of a discovery confidentiality protective order, disclosures deemed confidential by a party must be produced with a confidential designation (e.g., “Confidential—Attorneys Eyes Only”), and the disclosure of the information will be limited to each party’s outside attorney of record, including employees of outside attorney of record, and used only for litigation purposes.

LPR 1-5. CERTIFICATION OF DISCLOSURES

- (a) All statements, disclosures, and charts filed or served under these rules must be dated and signed by the attorney of record. The attorney's signature must attest that, to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the disclosure is made in good faith and the information contained in the statement, disclosure, or chart is correct at the time it is made and provides a complete statement of the information presently known to the party. Disclosures required by these rules are in addition to others required under the Federal Rules of Civil Procedure.
- (b) The parties must file with the court a notice certifying that all disclosures required under LPR 1-6 through 1-11 have been timely provided. The parties must file the notice within seven days after the deadline for service of the disclosures required under LPR 1-10. Any variation from these deadlines requires court approval.

LPR 1-6. INITIAL DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

Within 14 days after the Initial Scheduling Conference under Fed. R. Civ. P. 26(f), a party claiming patent infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions. Separately for each opposing party, the Disclosure of Asserted Claims and Infringement Contentions must contain the following information:

- (a) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;
- (b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process 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 limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

- (d) For each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each party in the direct infringement must be described;
- (e) Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;
- (f) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;
- (g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and
- (h) If a party claiming patent infringement alleges willful infringement, the basis for the allegation.

LPR 1-7. DOCUMENT PRODUCTION ACCOMPANYING ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS

With the Disclosure of Asserted Claims and Infringement Contentions, the party claiming patent infringement must produce to each opposing party or make available for inspection and copying:

- (a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third-party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention before the date of application for the patent in suit. A party's production of a document required herein does not constitute an admission that the document evidences or is prior art under 35 U.S.C. § 102;
- (b) All documents evidencing 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 the priority date identified under LPR 1-6(f), whichever is earlier;
- (c) A copy of the file history for each patent in suit;
- (d) All documents evidencing ownership of the patent rights by the party asserting patent infringement; and

- (e) If a party identifies instrumentalities under LPR 1-6(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies on as embodying any asserted claims. The producing party must separately identify by production number the documents that correspond to each category.

LPR 1-8. INITIAL DISCLOSURE OF NON-INFRINGEMENT, INVALIDITY, AND UNENFORCEABILITY CONTENTIONS

Within 45 days after service of the Initial Infringement Contentions, each party opposing a claim of patent infringement must serve on all other parties Non-Infringement, Invalidity, and Unenforceability Contentions that must include:

- (a) A detailed description of the factual and legal grounds for contentions of non-infringement, if any, including a clear identification of each limitation of each asserted claim alleged not to be present in the Accused Instrumentality;
- (b) A detailed description of the factual and legal grounds for contentions of invalidity, if any, including an identification of the prior art relied upon and where in the prior art each element of each asserted claim is found. Each prior-art patent must 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) must 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 who made the use or made and received the offer, or the person or entity who made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) must 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) must 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);
- (c) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;
- (d) A chart identifying specifically where in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that a party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;

- (e) A detailed statement of any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2) or failure of enablement, best mode, or written description requirements under 35 U.S.C. § 112(1); and
- (f) A detailed description of the factual and legal grounds for contentions of unenforceability, if any, including the identification of all dates, conduct, persons involved, and circumstances relied on for the contention, and when unenforceability is based on any alleged affirmative misrepresentation or omission of material fact committed before the United States Patent and Trademark Office, the identification of all prior art, dates of the prior art, dates of relevant conduct, and persons responsible for the alleged affirmative misrepresentation or omission of material fact.

LPR 1-9. DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS

At the time of service of the Non-Infringement, Invalidity, and Unenforceability Contentions, each party defending against patent infringement must also produce to each opposing party or make available for inspection and copying:

- (a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 1-6(c) chart; and
- (b) A copy or sample of the prior art identified under LPR 1-8(b) that does not appear in the file history of the patent(s) at issue. To the extent the item is not in English, an English translation of the portion(s) relied on must be produced. The producing party must separately identify by production number the documents that correspond to each category.

LPR 1-10. RESPONSE TO INITIAL NON-INFRINGEMENT, INVALIDITY, AND UNENFORCEABILITY CONTENTIONS

Within 14 days after service of the initial Non-Infringement, Invalidity, and Unenforceability Contentions, each party claiming patent infringement must serve on all other parties its response to Non-Infringement, Invalidity, and Unenforceability Contentions. The response must include a detailed description of the factual and legal grounds responding to each contention of non-infringement; invalidity (including whether the party admits to the identity of elements in asserted prior art and, if not, the reason for denial); and unenforceability.

LPR 1-11. DISCLOSURE REQUIREMENT IN PATENT CASES FOR DECLARATORY JUDGMENT OF INVALIDITY

In all cases in which a party files a complaint seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, each party seeking a declaratory judgment must serve on all other parties its initial Non-Infringement, Invalidity, and Unenforceability Contentions and corresponding LPR 1-9 document production within 14 days after the Initial Scheduling Conference. Within 45 days after service of the initial Non-Infringement, Invalidity, and Unenforceability Contentions, each party opposing the declaratory judgment must serve on all other parties its response to these initial contentions and, if the opposing party asserts a claim for patent infringement, its initial Disclosure of Asserted Claims and Infringement Contentions, including corresponding LPR 1-7 document production. LPR 1-11 does not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

LPR 1-12. AMENDMENT TO DISCLOSURES

Amendment of initial disclosures required by these rules may be made for good cause without leave of the court anytime before the discovery cut-off date. Thereafter, the disclosures are final and amendment of the disclosures may be made only by court order upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the nonmoving party, support a finding of good cause include: (a) a claim construction by the court different from that proposed by the party seeking amendment; (b) recent discovery of material prior art despite earlier diligent search; and (c) recent discovery of nonpublic information about the Accused Instrumentality despite earlier diligent search. The duty to supplement discovery responses does not excuse the need to obtain leave of the court to amend contentions.

LPR 1-13. EXCHANGE OF PROPOSED TERMS FOR CONSTRUCTION

Not later than 90 days after the Initial Scheduling Conference under Fed. R. Civ. P. 26(f), each party must serve on each other party a list of patent claim terms that the party contends should be construed by the court, and identify any claim term that the party contends should be governed by 35 U.S.C. § 112(6). The parties must thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties must jointly identify the terms likely to be most significant to resolving the parties' dispute, including those terms for which construction may be case or claim dispositive.

LPR 1-14. EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

Not later than 14 days after the exchange of lists under LPR 1-13, the parties must simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each Preliminary Claim Construction must also, for each term that any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that term's function.

At the same time the parties exchange their respective Preliminary Claim Constructions, each party must also:

- (a) Identify all references from the specifications or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence must be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party also must provide a description of the substance of that witness's proposed testimony that includes a list of any opinions to be rendered in connection with claim construction; and
- (b) Schedule a time for counsel to meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

LPR 1-15. JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Not later than 14 days after the exchange of Preliminary Claim Constructions and Extrinsic Evidence under LPR 1-14, the parties must prepare and submit to the court a Joint Claim Construction and Prehearing Statement, which must contain the following information:

- (a) The construction of those terms on which parties agree;
- (b) Each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;
- (c) An identification of the terms whose construction will be most significant to the resolution of the case. The parties must also identify any term whose construction will be case or claim dispositive;

- (d) The anticipated length of time necessary for the Claim Construction Hearing; and
- (e) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of those witnesses, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction. Terms to be construed by the court must be included in a chart that sets forth the claim language as it appears in the patent with terms and phrases to be construed in bold and include each party's proposed construction and any agreed proposed construction.

LPR 1-16. CLAIM CONSTRUCTION BRIEFING

Not later than 21 days after submitting to the court the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement (or the party asserting invalidity if there is no infringement issue present in the case) must serve and file an opening claim construction brief and any evidence supporting its claim construction.

Not later than 21 days after service of the opening brief, each opposing party must serve and file its responsive brief and supporting evidence.

Not later than seven days after service on it of a responsive brief, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, must serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

LPR 1-17. CLAIM CONSTRUCTION HEARING

The court may conduct a Claim Construction Hearing, if it believes a hearing is necessary for construction of the claims. A party may request a hearing at the time of its briefing under LPR 1-16.

LPR 1-18. AMENDING CLAIM CONSTRUCTION SCHEDULE

The claim-construction schedule under this rule may be amended with leave of the court if circumstances warrant, including the court's decision to adjudicate issues regarding patent validity, patent enforceability, or both before claim construction is necessary.

LPR 1-19. MANDATORY SETTLEMENT CONFERENCES FOR PATENT CASES

Mandatory settlement conferences for patent cases must be conducted by the magistrate judge assigned to the case as follows:

- (a) A Pre-Claim Construction Settlement Conference must be held within 30 days after the parties have submitted all initial disclosures and responses thereto as required under LPR 1-6 through LPR 1-12;

- (b) A Post-Claim Construction Order Settlement conference must be held within 30 days after entry of the claim construction order;
- (c) A Pretrial Settlement Conference must be held within 30 days after filing the Pretrial Order or further order of the court.

LPR 1-20. STAY OF FEDERAL COURT PROCEEDINGS

The court may order a stay of litigation pending the outcome of a reexamination proceeding before the United States Patent and Trademark Office that concerns a patent at issue in the federal court litigation. Whether the court stays litigation upon the request of a party will depend on the circumstances of each particular case, including without limitation: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and the trial of the case, (3) whether discovery is complete, and (4) whether a trial date has been set.

LPR 1-21. GOOD FAITH PARTICIPATION

A failure to make a good-faith effort to provide initial disclosures, narrow the instances of disputed claim-construction terms, participate in the meet-and-confer process, or comply with any other obligations under these rules may expose an attorney to sanctions, including under 28 U.S.C. § 1927.

LPR 1-22. USE OF COURT APPOINTED MASTERS

In a patent case, the court may appoint a master under Fed. R. Civ. P. 53.

LPR 1-23. FORM OF DISCOVERY PLAN AND SCHEDULING ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____)	
Plaintiff,)	Case No.
)	
vs.)	[SAMPLE] DISCOVERY PLAN AND
)	SCHEDULING ORDER
_____)	
Defendant.)	SPECIAL SCHEDULING REVIEW
)	REQUESTED FOR A PATENT CASE
_____)	

Under Fed. R. Civ. P. 26(f), Local Rule 26-1, and Patent Local Rules 16.1-1 et seq., the respective parties conducted a discovery-planning conference on **January __, 20__**, and hereby submit to the court the following proposed Discovery Plan and Scheduling Order:

1. Discovery Cut-Off	October __, 20__ (270 days)
2. Joint Protective Order	January __, 20__ [14 days after discovery-planning conference]
3. Disclosure of Rule 26(a) Initial Disclosures, Asserted Claims, and Infringement Contentions	January __, 20__
4. Disclosure of Non-Infringement, Invalidity, and Unenforceability Contentions	March __, 20__ [45 days later]
5. Response to Non-Infringement Contentions	March __, 20__ [14 days later]
6. Three Proposed Dates for Pre-Claim Construction Settlement Conference	April __, 20__; April __, 20__; April __, 20__ [3 proposed dates that are within 30 days after the completion of the Initial Disclosures and Responses]
7. Motion to Amend Pleadings/Parties	July __, 20__ [90 days to close of discovery]
8. Expert Designations	August __, 20__ [60 days to close of discovery, or as the parties may stipulate after claim construction order issued by court]
9. Rebuttal Expert Designations	September __, 20__ [30 days to close of discovery]
10. Interim Status Report	August __, 20__ [60 days to close of discovery]
11. Exchange of Proposed Terms of Construction	April __, 20__ [90 days from Scheduling Conference]
12. Exchange of Preliminary Claim Construction	April __, 20__ [14 days later]
13. Submit Joint Claim Construction and Prehearing Statement	April __, 20__ [14 days later]
14. Opening Claim Construction Brief	May __, 20__ [21 days later]
15. Response to Claim Construction Brief	June __, 20__ [21 days later]
16. Reply Claim Construction Brief and Matter Submitted to court for Hearing	June __, 20__ [7 days later]
17. Claim Construction Tutorials, Hearing, and Order from the court	July __, 20__ [within 28 days after the Reply brief is filed, the court will complete its hearing and issue its order. If the court is unable to issue its order within 28 days after submission of the Reply brief, the court may reset expert disclosure deadlines as requested by a party or stipulation.]
18. Dispositive Motion Deadline	November __, 20__ [30 days after discovery closes]

IT IS ORDERED that within **30 days** after Initial Disclosures and Responses are complete, the parties must submit to a Pre-Claim Construction Settlement Conference as set by the court.

IT IS FURTHER ORDERED that within **30 days** after the court enters a claim construction order, the parties must submit to a Post-Claim Construction Settlement Conference as set by the court.

IT IS FURTHER ORDERED that any extension of the discovery deadline will not be allowed without a showing of good cause for the extension. All motions or stipulations to extend discovery must be received by the court at least **21 days before the expiration of the subject deadline**. A request made after this date will not be granted unless the movant demonstrates that the failure to act was the result of excusable neglect. The motion or stipulation must include:

- (a) A statement specifying the discovery completed by the parties as of the date of the motion or stipulation;
- (b) A specific description of the discovery that remains to be completed;
- (c) The reasons why the remaining discovery was not completed within the time limit of the existing discovery deadline; and
- (d) A proposed schedule for the completion of all remaining discovery.

IT IS FURTHER ORDERED that, if no dispositive motions will be filed within the time specified in this order, then the parties must file a written, joint proposed pretrial order within 30 days of the dispositive motion cutoff, on or before **December __, 20__**. If dispositive motions are filed, then the parties must file a written, joint proposed pretrial order within 30 days of the date the court enters a ruling on the dispositive motions. Within 30 days of the entry of a pretrial order, or as further ordered by the court, the parties must submit to a pretrial settlement conference.

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE
DATED: _____.