



# **U.S. District Court Practice**

---

The Honorable Richard G. Andrews

Steven L. Caponi, Esquire

K&L Gates LLP

## **FEDERAL PRACTICE IN THE DISTRICT OF DELAWARE<sup>1</sup>**

### **I. ROLE OF DELAWARE COUNSEL**

- A. Why do we have Delaware counsel?
- B. Delaware counsel are not just a mail drop
  - 1. Compliance with Rules and Practices of D. Del. - required and expected
    - a. Advise
    - b. Guide
    - c. Enforce
  - 2. Help the Court
- C. Must ensure that all submissions are in accord with D. Del. Local Rules, Federal Rules of Civil Procedure and each district judge's rules and practices
  - 1. Counsel must be familiar and fully informed of each Judge's specific practices
  - 2. Read local rules
  - 3. Visit each judge's website: [www.deduscourts.gov/ChambersMain.htm](http://www.deduscourts.gov/ChambersMain.htm)
- D. Delaware counsel are gate keepers and should not risk credibility
- E. Written work must be read and reviewed by Delaware counsel with a critical eye
- F. Advise non-Delaware counsel to tone down rhetoric or inflammatory language
- G. All submissions must pass the "red-faced" test
- H. Delaware counsel must volunteer to be sounding board for pro hac counsel
- I. Extensions should generally be agreed to by Delaware counsel
  - 1. Reasonable extension requests should be liberally granted
  - 2. There is no need to condition requests -no quid pro quo

---

<sup>1</sup> "Federal Practice in the District of Delaware" was presented in 2015 by Judge Sleet and Monte Squire, Esq., and this outline is their outline with some modest updating.

**J. Best Practices**

1. Meet and confer
2. Be concise and focus arguments/issues for Court
3. Don't waste time
4. Educate pro hac counsel
5. Make realistic requests

**II. ELECTRONIC FILING**

A. Delaware counsel and their respective firms/staff are responsible for knowing CM-ECF procedures, each Judge's practices and procedures

B. All information is posted and available on D. Del. website:

[www.ded.uscourts.gov](http://www.ded.uscourts.gov)

1. Pro Hac attorney must register for notice rights
2. Follow Fed. R. Civ. P., D. Del. Local Rules and Standing Orders
3. CM/ECF Guidelines
4. Guidelines for use of Courthouse Facilities (Tab 2)

**III. COURT'S DOCKET**

A. Complex cases

1. >50% Patent and IP cases

B. Large number of filings (Tab 3)

1. # 1 weighted case average during recent years
2. Large civil docket (>1200 new filings in 2015)

C. Each Judge has large docket/case load- mostly complex cases

1. >300 open civil cases per judge
2. >175 patent/IP cases per judge
3. Trials, civil motions, discovery, claim construction, scheduling, duty

matters, criminal cases

4. Judicial reporting obligations - CJRA; 6 month motions; bench trials/bankruptcy appeals/social security appeals > 6 months old; cases > 3 years old

D. Very limited resources

1. Small court - 4 district judges, 3 magistrate judges
2. Small staff
3. Vastly outnumbered by counsel

#### **IV. COURTROOM DECORUM, DEMEANOR AND ETHICS**

A. There is a duty of candor to the Court and opposing counsel.

1. See Judge Sleet's *Santarus* opinion (April 14, 2010) (Tab 4)

B. Duty of fairness to opposing counsel

C. Impartiality and decorum of Court

1. Never make effort to communicate with Court Ex Parte
2. Even on Scheduling Matters
3. If counsel won't agree to call together, then contact the Court in writing (depending on each Judge's procedures) and cc: all counsel

D. Stand when Judge and Jury enter and exit courtroom

E. No talking while standing (or packing up, moving) (“R-E-S-P-E-C-T”)

F. No first names\*

G. Promptness and punctuality is expected

1. Be sitting in courtroom at least 15 minutes (better 30) prior to hearing time\*

H. Dress code for lawyers - modest and professional

I. Maintain Confidence, Politeness and Courtesy

J. Well of the courtroom- Do not enter without permission of Judge

- K. Always address Judge as Your Honor\*
  - 1. Don't interrupt the judge
  - 2. Always be respectful to the Court in all actions at all times
  - 3. Never address opposing counsel unless through the judge or judge directs you to do it

**V. TRIAL PRACTICE IN FEDERAL COURT**

- A. The focus of the Court is three-fold:
  - 1. Value jurors' time
  - 2. Value the Court's limited time and resources
  - 3. Fed. R. Civ. P. 1-"secure the just, speedy, and inexpensive determination of every action and proceeding"
- B. Jury Trial Practice and Courtroom Presentation
  - 1. Timed trials
  - 2. Evidence/Exhibits
    - a. Judge expects the parties will exchange witness and exhibit lists prior to trial.
    - b. Judge also expects that the parties will exchange final witness order and documents for those witnesses 1-2 days before they will testify
    - c. Issues must be raised in advance
    - d. Exhibits need to be marked by the lawyers
    - e. Demonstratives- Need to be exchanged so objections can be worked-out in advance
  - 3. Witnesses
    - a. Should be identified in the pretrial order

- b. All witnesses are sequestered except a corporate representative and experts
- 4. Documents identified in the pretrial order
  - a. Documents cannot be admitted except through witness testimony
  - b. Documents cannot be shown to the jury unless they are formally admitted
- 5. Impeachment by deposition
  - a. Deposition excerpts
  - b. Designations need to be exchanged and disputes brought to the Court's attention prior to the time they are going to be played
  - c. Video excerpts need to be exchanged even sooner so they can be edited
- 6. Transition statements
- 7. Expert Testimony- "Beyond the Scope" Objections
- 8. Jury Instructions
  - a. Remember the judge has to read these out loud
  - b. Be concise and give only what is necessary and what is important
- 9. Order of presentation
  - a. Direct
  - b. Cross
  - c. Re-Direct
  - d. No re-cross, unless exceptional circumstance arises (this is very rare)

## **VI. OPENING STATEMENTS**

### **A. Preliminary Considerations**

1. Trying a case is not a "brief with legs;" very different skill set
2. Remember jurors bring to the decision making process
3. Most people learn visually (so use simple, bold, graphic demonstratives)
4. What people generally remember:
  - a. Primacy = What they see/hear first (i.e., the first impression)
  - b. Recency= What they saw/heard last
  - c. Frequency = Repeat concepts (i.e., repeat the most important concepts; keep this organic from the witnesses)

B. Opening Statement- Your job in your opening statement is to tell a credible story that will (eventually) be supported by the evidence you present

1. First consideration = What is your theme?
2. Use your witnesses to present the evidence that proves your theme
3. Use your closing to state your theme again, perhaps with more detail
4. Read the transcript of your opening statement to draft your closing argument, because your opening statement is an essential predicate to your closing argument.
5. Remember that the jury is "cold" to your story, and you need to warm them up gracefully
6. To test your theme, find no more than 10 key documents, and use them to draft your story
7. Purpose of an Opening Statement

C. Using Demonstratives

1. First find out if you are allowed, and if you are, under what conditions
2. Share with opposing counsel (best practice)
3. Whether or not exhibits be used (not usually, unless it is an obvious one)

that both sides agree will eventually be admitted into evidence)

4. Limit the number of demonstratives used in opening statement

## **VII. DIRECT EXAMINATION**

- A. Fact Witnesses
- B. Expert Witnesses
- C. Case-in-Chief / Rebuttal
  1. Take the time to lay a foundation with each witness, for each document or piece of evidence, including experts
- D. Transition Statements
  1. Use them (all of the Judges like them)
  2. Prepare enough so that when your witness gives you the answer you want, you know when to stop
  3. Watch the jury when the witness is answering your questions so you can gauge whether they are (1) paying attention and (2) anything makes a particular impact

## **VIII. CROSS EXAMINATION**

- A. Preliminary Considerations
  1. Structure the exam according to your purpose
  2. Less is more
  3. Cover less material very slowly
  4. Only ask leading questions
  5. Keep control
  6. Questions should be longer than answers
  7. Consider whether you need to lay a foundation
  8. How to Impeach (Know each judge's preference)



B. Experts on Cross Examination

1. Less is almost always more
2. Expert is not going to change their mind or opinion, live with it because it is pointless to argue
3. Limit your cross examination to the likely productive areas:

C. Redirect

1. Limited to the scope of cross
2. Prepare in advance
3. Typical purpose: showing witness rest of document/testimony that was used in attempted impeachment
4. It is unlikely there will be any questioning after redirect

**IX. CLOSING STATEMENTS**

A. Building Your Closing Statement

1. "Rule of 3"- most people understand concepts in groups of three, so break your theme or important concept into three parts
2. Before drafting your closing argument, put yourself in the jury box and be thoughtful about what they learned from your trial presentation
3. Go back and read your opening statement and make sure you delivered what you promised

**X. BASIC TRIAL DO'S AND DON'TS FOR ATTORNEYS**

A. Opening Statements

1. Don't skimp on your opening statement in a bench trial, because Judge wants to hear your theme
2. Not many lawyers give a good theme or tell a good story, whether it's a jury or bench trial

3. Don't use demonstratives in an opening unless both sides agree on them
- B. Exhibits/Evidence
1. All exhibits must come through a witness
- C. Direct Exam
1. Don't make the facts boring
  2. Don't lead the witness- it shows the judge and the jury that your witness is not knowledgeable, not credible
  3. Don't ask unnecessary preliminary questions (e.g., what is your address)
  4. Don't allow your witness to be friendly and cooperative on direct, but evasive and non-responsive on cross
- D. Cross Examination
1. Impeachment opportunities are rare and lawyers try it too much
  2. Bad impeachment can do more harm than good
  3. Must give witness opportunity to refresh recollection
- E. Closing Statements
1. Try to tell the jury which 1-2 exhibits are the most important. If you can, tie it to a question on a jury verdict form
  2. Keep it simple
- X. PROCEDURES / CASE ADMINISTRATION**
- A. Regularly review the “Local Rules & General Orders” issued by the Court to ensure compliance with Court’s expectations.
1. See <http://www.ded.uscourts.gov/court-info/local-rules-and-orders>
- B. Review the web page for each Judge for applicable forms, guidelines and standing orders. Don’t assume each Judge follows the same procedures.

1. See e.g. <http://www.ded.uscourts.gov/judge/judge-richard-g-andrews>
- C. Patent vs. Non-Patent cases
1. Most Judges have adopted different pre-trial procedures for patent cases and non-patent cases. This can include distinct approaches to:
    - a. Scheduling Orders (Tabs 5 & 6)
    - b. Pretrial Orders
    - c. Voir Dire Procedures
    - d. Jury Instructions
  2. Be familiar with Chief Judge Stark's new (2014) patent procedures (Tab 7)
    - a. <http://www.ded.uscourts.gov/judge/chief-judge-leonard-p-stark>
- D. Be familiar with the Default Standards for discovery
1. Default Standards for Discovery or Electronically Stored Information (Tab 8)
  2. Default Standard for access to Source Code (Tab 8)
    - a. <http://www.ded.uscourts.gov/court-info/local-rules-and-orders>

**TAB-1**



# UNITED STATES DISTRICT COURT District of Delaware

Honorable Leonard P. Stark, Chief Judge | John A. Cerino - Clerk of Court

Text Size:

GO

[Chambers](#)

[Clerk's Office](#)

[Juror Info](#)

[For Attorneys](#)

[Opinions](#)

[Forms](#)

[CM/ECF  
Information](#)

[Filing Without  
An Attorney](#)

[About the Court](#)

[Home](#) » [About the Court](#) » [Judges](#)

## Judges

- [The Honorable Gunning Bedford, Jr.](#)
- [The Honorable John Fisher](#)
- [The Honorable Willard Hall](#)
- [The Honorable Edward Green Bradford](#)
- [The Honorable Leonard Eugene Wales](#)
- [The Honorable Edward Green Bradford, II](#)
- [The Honorable Hugh Martin Morris](#)
- [The Honorable John P. Nields](#)
- [The Honorable Paul C. Leahy](#)
- [The Honorable Richard S. Rodney](#)
- [The Honorable Caleb M. Wright](#)
- [The Honorable Caleb Rodney Layton, III](#)
- [The Honorable Edwin DeHaven Steel, Jr.](#)
- [The Honorable James L. Latchum](#)
- [The Honorable Walter K. Stapleton](#)
- [The Honorable Joseph J. Longobardi](#)
- [The Honorable Murray M. Schwartz](#)
- [The Honorable Joseph J. Farnan, Jr.](#)
- [The Honorable Jane R. Roth](#)
- [The Honorable Sue L. Robinson](#)
- [The Honorable Roderick R. McKelvie](#)
- [The Honorable Gregory M. Sleet](#)
- [The Honorable Kent A. Jordan](#)
- [The Honorable Leonard P. Stark](#)

[The Honorable Richard G. Andrews](#)

## The Honorable Richard G. Andrews

### Andrews, Richard Gibson

Born in Manchester, England

### Federal Judicial Service:

Judge, U. S. District Court, District of Delaware  
Nominated by Barack Obama on May 11, 2011, to a seat vacated by Joseph James Farnan, Jr.; Confirmed by the Senate on November 3, 2011, and received commission on November 7, 2011.

### Education:

Haverford College, B.A., 1977  
University of California, Berkeley, Boalt Hall School of Law, J.D., 1981

### Professional Career:

Law clerk, Hon. Collins J. Seitz, U.S. Court of Appeals for the Third Circuit, 1981-1982;  
Assistant United States Attorney, District of Delaware, 1983-2007;  
State prosecutor, Delaware Department of Justice, 2007-2011.

[Magistrates](#)

[Clerks](#)

[U.S. Marshals](#)

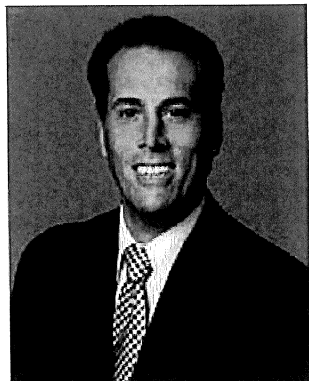
[U.S. Attorneys](#)

[Court Security](#)

[Layton Award Recipients](#)

[Court Links](#)

**K&L GATES**



## Steven L. Caponi

Partner

Wilmington  
+1.302.416.7080  
Fax +1.302.416.7020

### Primary Practice

Commercial Disputes

### Secondary Practices

Cyber Law and Cybersecurity

### Education

- ▣ J.D., Widener University Commonwealth Law School, 1996, (*cum laude*)
- ▣ B.A., Temple University, 1992

### Admissions

- ▣ Bar of Delaware
- ▣ Bar of Pennsylvania
- ▣ United States Court of Appeals for the Third Circuit
- ▣ United States District Court for the District of Delaware
- ▣ United States District Court for the Eastern District of Pennsylvania

Steven Caponi maintains a national litigation practice with a concentration on corporate and intellectual property matters. His practice covers all facets of business litigation including breach of fiduciary duty and corporate governance claims, merger and acquisition litigation, securities litigation, patent infringement and intellectual property, and cybersecurity and data privacy.

Mr. Caponi regularly handles matters in jurisdictions across the United States. He frequently appears before the state and federal courts in Delaware, including the Court of Chancery.

As a prominent speaker and writer, Mr. Caponi is widely recognized for his practical leadership on a wide range of cybersecurity policy issues, including emerging trends, NIST Compliance, industry best practices, data breach preparedness and response, and federal and state regulation. He has become a well-known policy and substantive thought leader in the areas of cybersecurity and data privacy.

### News

**K&L Gates Strengthens Wilmington Office with Addition of Litigation and Cybersecurity Partner**  
K&L Gates LLP has added Steven L. Caponi as a partner in the commercial disputes, cyber law and cybersecurity, and intellectual property litigation practices.  
Press Releases  
26 April 2016

**TAB-2**

Text Size:



# UNITED STATES DISTRICT COURT District of Delaware

Honorable Leonard P. Stark, Chief Judge | John A. Cerino - Clerk of Court

- Chambers
- Clerk's Office
- Juror Info
- For Attorneys
- Opinions
- Forms
- CM/ECF Information
- Filing Without An Attorney
- About the Court

[Courthouse Facilities](#)

Home » For Attorneys

[Attorney Admissions](#)

[Annual Attorney Registration Fees](#)

[Pro Hac Vice](#)

[Attorney Lounges](#)

[Advisory Committee](#)

[Federal Civil Panel](#)

[Wireless Access for Attorneys](#)

[Criminal Justice Act \(CJA\)](#)

## Guidelines for use of Courthouse Facilities

### COURTHOUSE FACILITIES

The Judges have adopted the following guidelines for counsel's use of the courthouse facilities. Please see that your staff and any subcontractors who use the facilities are familiar with them.

### COURTHOUSE STAFF

The Courtroom Deputies are generally responsible for the day to day use of the courtrooms. They are:

<u>Courtroom Deputy</u>	<u>Assignment</u>	<u>Telephone</u>
Ronald Golden	Chief Judge Leonard P. Stark	302-573-4538
Courtroom Deputy	Judge Sue L. Robinson	302-573-6356
Mark Buckson	Judge Gregory M. Sleet	302-573-6651
Kristin Ringgold	Judge Richard G. Andrews	302-573-4536
Keith Kincaid	Chief Magistrate Judge Mary Pat Thyng	302-573-6128
Deborah Krett	Magistrate Judge Christopher J. Burke	302-573-6168
Larisha Hicks	Magistrate Judge Sherry R. Fallon	302-573-4551

If you have any questions about access to or use of our facilities you should speak to the [Courtroom Deputy](#).

### ACCESS TO THE COURTHOUSE

The courthouse is generally open from 8:00 a.m. to 5:30 p.m. Court Security Officers are at the front door of the courthouse. To contact the Court Security Officers please call Martin Donohue, Site Supervisor, at 302-573-6288.

If you believe you need to make special arrangements for access to the courthouse you should speak with the Courtroom Deputy.

### DELIVERIES

Large objects and boxes of papers can be unloaded at the French Street loading dock and brought to a courtroom floor on the freight elevator. For arrangements regarding access to the loading dock and freight elevator, contact Gil Nguyen, GSA Building Manager, at 302-573-6338 or via email at gilbert.nguyen@gsa.gov and Martin Donohue, Site Supervisor, at 302-573-6288.

We will not allow you to use hand trucks or dollies with metal wheels in our facility. Any hand truck or dolly must have soft rubber tires and bumper pads.

### COURTROOM HOURS

The courtrooms will be locked at the end of each trial day, and unlocked each morning before trial at approximately 8:00 a.m.

### THE COURTROOM

Check with the Courtroom Deputy before placing file cabinets, exhibits or other items in the courtroom. Instruct your staff that no item may be placed on or removed from the clerk's or judge's bench without the specific permission of the Courtroom Deputy. In addition, without that permission, no one may enter the jury room or jury box, or the area behind the clerk's or judge's bench.

You may not use the hallways, the courthouse lobbies or fire exit stairwells for storing, packing or unpacking items.

### ATTORNEY LOUNGE RESERVATIONS

An Attorney Lounge may be reserved by a member of the Delaware Bar on a first come, first-served basis, for up to 7.5 hours daily (between the hours of 8:30 AM and 4:00 PM). Preference will be given to attorneys/firms



participating in a trial. In order to accommodate multiple trials and opposing counsel, reservations are restricted to one room per side.

To make a new reservation, change or cancel an existing reservation, submit to the Clerk's Office, a Reservation/Change/Cancellation request via e-mail attachment, to AttorneyLounge@ded.uscourts.gov . Refer to our web page "Attorney Lounges" for complete details.

#### **WIRELESS ACCESS FOR ATTORNEYS**

Wireless service is available in each courtroom, adjacent lobby, attorney lounge and chambers. Service is provided after requesting access from the presiding Judge (see request form).

**Please read the following WIFI Banner Message before requesting access.**

WIFI Banner Message (Also displayed prior to logon)

Wireless Service provided "AS IS". This service provides access to the Internet on an "as is" basis with all risks inherent in such access. The providers of the service make no warranty that the service or that any information, software, or other material accessible on the service is free of viruses, worms, trojan horses or other harmful components. By connecting, the user acknowledges and accepts the risks associated with public access to the Internet and public use of an unsecured wireless network.

Wireless service provided "AS AVAILABLE". The service is provided on an "as available" basis without warranties of any kind, either express or implied, that the Service will be uninterrupted or error-free. No advice or information given by the providers, affiliates, or contractors of the service or their representative employees shall create such warranty.

It is the patron's responsibility to ensure that their equipment is functioning and properly configured. The Court will provide written instructions on how to connect to this network. However, Court staff cannot provide any technical help with configuring user equipment.

Because this is a shared resource, the speed of the connection may vary depending on, but not limited to, factors such as distance from the access point, the number of users currently connected, the status of the patron's equipment, etc. To ensure the best availability and performance, any connection inactive for 10 minutes will be automatically logged out.

**The fillable Wireless Access Request Form is available here.**

Once completed the form should be emailed to the appropriate Courtroom Deputy. Courtroom Deputy will process the form through the presiding judge for approval. Approved request forms will be emailed to the IT department for setup and login information.

Courtroom Deputy will communicate with Lead / Local counsel response to request.

#### **THE COURT'S AUDIO VISUAL EQUIPMENT**

The court may have the following equipment available for you to use during a hearing or trial:

- Chalkboards, dry erase boards, and easels with flip chart pads
- DVD/VCR
- Body microphones
- Mobile Evidence Presentation Carts equipped with the following
  - o Wolfvision Document Camera
  - o Computer/laptop interface
  - o DVD/VCR
  - o Annotation with touch screens
  - o 21" LCD tabletop displays
- Wireless control panel with blackout and selectable input/output screens
- Tandberg Video codec with Camera and display.
- 8'x8' projection screen and 50" Plasma Monitor
- InFocus LP850 projector
- Draper Cinefold 116"x116" screen

If you wish to use any of this equipment during a hearing or trial, you should speak with the Courtroom Deputy. He or she will review the equipment with you. You or your staff may not use certain equipment (such as the Evidence Presentation System) until you demonstrate that you are familiar with it's proper use.

#### **INSTALLING AND USING ELECTRONIC EQUIPMENT IN THE COURTROOM**

The Courtroom Deputy will provide you with specific instructions on installing and using electronic equipment in the courtroom. You should expect that you and your staff may use computers in the courtrooms.

The Courtroom Deputy will need to be present when any equipment or wiring is installed. All wiring will need to be covered by rubber wire protectors. Do not expect to be able to tape, tack or glue wires.

#### **THE FOLLOWING ARE NOT PERMITTED IN THE COURTROOMS**

- Beepers
- Radios
- Cameras
- Camcorders/Video Recorders
- Tape Recorders
- Reading Newspapers, Magazines, etc.
- Food or Drinks (Water and cups will be provided by the Court.)

**VENDOR SECURITY CLEARANCE**

If you are a vendor that does business in the courthouse on a regular basis and would like to apply for a limited access security badge, please contact Gil Nguyen, GSA Building Manager, at 302-573-6338 or via email at gilbert.nguyen@gsa.gov.

Be advised that this is a lengthy process that can take between four and six weeks to complete.

**SECURITY ESCORT SERVICE**

If you are a vendor or private attorney who will be installing electronic equipment in a courtroom and do not have a security clearance, you will need to make arrangements with the Court Security Officers (CSO) for secured escort service while the equipment is being delivered and installed.

Arrangements should be made two weeks in advance. Please contact the Clerk's Office at 302-573-6170.

**COURTHOUSE SECURITY**

The U.S. Marshals Service provides security for the federal judiciary and maintains custody of pretrial detainees. The Acting Marshal is Glen Paul. The Marshals' office is on the first floor of the courthouse. Their telephone number is 573-6176. The Marshals Judicial Security Inspector is Barbara Fahey and she can be reached at 302-573-6176 ext 6028 or via email at barbara.fahey@usdoj.gov.

**TAB-3**

Table C-3. (March 31, 2015—Continued)

Circuit and District	Private Cases																
	Total Private Civil Cases	Contract	Real Property	FELA <sup>1</sup>	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury	Other Tort Actions	Civil Rights	Prisoner Petitions			Mandamus and Other	Intellectual Property	Labor Suits	All Other	
										Habeas Corpus General	Death Penalty	Conditions and Civil Rights					
<b>TOTAL</b>	<b>237,934</b>	<b>25,024</b>	<b>7,799</b>	<b>258</b>	<b>1,112</b>	<b>3,721</b>	<b>56,531</b>	<b>5,620</b>	<b>35,312</b>	<b>16,315</b>	<b>191</b>	<b>27,376</b>	<b>576</b>	<b>13,825</b>	<b>18,230</b>	<b>26,044</b>	
<b>DC</b>	<b>1,150</b>	<b>115</b>	<b>31</b>	<b>-</b>	<b>-</b>	<b>10</b>	<b>77</b>	<b>23</b>	<b>311</b>	<b>21</b>	<b>-</b>	<b>79</b>	<b>6</b>	<b>63</b>	<b>145</b>	<b>269</b>	
<b>1ST</b>	<b>6,612</b>	<b>660</b>	<b>394</b>	<b>8</b>	<b>42</b>	<b>64</b>	<b>2,819</b>	<b>95</b>	<b>862</b>	<b>131</b>	<b>-</b>	<b>302</b>	<b>3</b>	<b>219</b>	<b>413</b>	<b>600</b>	
ME	374	70	3	-	1	4	36	8	137	17	-	34	-	6	33	25	
MA	4,617	390	124	6	27	27	2,587	65	385	66	-	171	1	164	244	360	
NH	379	47	48	-	1	6	41	8	67	23	-	51	-	17	21	49	
RI	441	74	62	-	4	9	24	10	87	12	-	32	1	15	55	56	
PR	801	79	157	2	9	18	131	4	186	13	-	14	1	17	60	110	
<b>2ND</b>	<b>21,697</b>	<b>2,617</b>	<b>412</b>	<b>84</b>	<b>59</b>	<b>406</b>	<b>2,877</b>	<b>347</b>	<b>4,944</b>	<b>640</b>	<b>-</b>	<b>2,280</b>	<b>23</b>	<b>1,061</b>	<b>2,906</b>	<b>3,041</b>	
CT	1,731	230	22	9	3	26	174	45	486	46	-	182	-	78	145	285	
NY/N	1,394	103	134	3	5	14	77	10	316	133	-	397	-	20	72	110	
NYE	6,501	855	140	37	29	143	507	111	1,658	163	-	282	7	202	1,121	1,246	
NYS	10,714	1,312	99	35	21	191	1,945	167	2,222	206	-	1,165	16	720	1,479	1,136	
NY/W	1,190	90	14	-	-	24	142	12	216	89	-	237	-	36	77	253	
VT	167	27	3	-	1	8	32	2	46	3	-	17	-	5	12	11	
<b>3RD</b>	<b>22,487</b>	<b>3,012</b>	<b>399</b>	<b>48</b>	<b>32</b>	<b>554</b>	<b>4,401</b>	<b>369</b>	<b>3,750</b>	<b>1,352</b>	<b>31</b>	<b>1,943</b>	<b>14</b>	<b>2,139</b>	<b>1,330</b>	<b>3,103</b>	
DE	1,541	89	5	2	1	6	34	11	125	56	2	101	3	957	24	125	
NJ	8,122	1,579	181	19	16	184	1,088	184	1,180	306	-	595	3	792	576	1,419	
PA/E	8,793	869	77	25	3	261	3,039	115	1,435	466	22	637	7	321	424	1,092	
PA/M	1,748	212	59	2	-	69	116	26	423	219	2	284	-	25	100	211	
PA/W	2,069	231	29	-	4	24	97	27	532	312	5	325	1	44	197	241	
VI	214	32	48	-	8	10	27	6	55	3	-	1	-	-	9	15	
<b>4TH</b>	<b>36,530</b>	<b>1,787</b>	<b>350</b>	<b>6</b>	<b>35</b>	<b>327</b>	<b>23,714</b>	<b>226</b>	<b>1,911</b>	<b>1,440</b>	<b>3</b>	<b>2,812</b>	<b>201</b>	<b>871</b>	<b>1,245</b>	<b>1,602</b>	
MD	3,231	384	111	1	2	130	216	69	463	147	-	420	142	272	422	452	
NC/E	1,123	176	26	-	6	10	90	16	181	124	1	279	2	30	46	136	
NC/M	791	103	19	1	-	8	26	13	129	72	-	235	1	40	35	59	
NC/W	840	145	13	1	-	9	53	22	164	12	1	125	1	52	52	130	
SC	4,538	375	34	1	-	60	1,978	48	383	443	-	632	22	49	320	179	
VA/E	4,047	352	93	-	11	42	153	32	393	266	1	604	25	390	268	407	
VA/W	880	68	28	1	-	28	58	9	94	118	-	362	2	17	35	60	
WA/W	471	77	18	-	-	12	51	6	38	88	-	76	6	16	26	57	
WA/N	21,609	107	8	1	2	28	21,089	11	66	40	-	79	-	5	51	122	

**Table C-3.  
U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District,  
During the 12-Month Period Ending March 31, 2015**

Circuit and District	Total Civil Cases	Total U.S. Civil Cases	Contract	Real Property	Tort Action	U.S. Cases													
						Civil Rights	Motions to Vacate Sentence		Habeas Corpus General		Prisoner Petitions		Mandamus and Other		Habeas Corpus Alien Detainee	Forfeitures and Penalties	Labor Suits	Social Security	All Other
							Civil Rights	Death Penalty	Prison Civil Rights	Prison Condition	Prison Other	Prison Condition	Prison Other						
<b>TOTAL</b>	<b>281,608</b>	<b>43,674</b>	<b>2,148</b>	<b>887</b>	<b>1,776</b>	<b>1,529</b>	<b>6,504</b>	<b>2,427</b>	<b>10</b>	<b>916</b>	<b>288</b>	<b>341</b>	<b>671</b>	<b>1,818</b>	<b>408</b>	<b>19,337</b>	<b>4,614</b>		
DC	2,166	1,016	61	12	44	142	26	48	-	99	8	16	2	12	5	33	508		
1ST	7,709	1,097	27	25	72	56	130	47	-	35	2	1	30	78	18	420	156		
ME	535	161	3	6	8	8	14	-	-	-	-	-	-	4	2	103	13		
MA	5,104	487	18	7	29	30	46	34	-	32	-	1	30	5	12	145	98		
NH	529	150	4	1	4	5	9	10	-	3	2	-	-	25	1	78	8		
RI	548	107	1	5	9	4	15	-	-	-	-	-	-	6	1	53	13		
PR	993	192	1	6	22	9	46	3	-	-	-	-	-	38	2	41	24		
2ND	25,454	3,757	152	50	194	94	352	90	-	55	7	16	44	160	92	1,930	521		
CT	2,138	407	4	5	23	28	36	17	-	11	-	2	4	33	3	196	45		
NY,N	1,928	534	33	3	26	3	47	2	-	1	-	-	-	20	5	382	12		
NYE	7,429	928	62	12	76	27	75	18	-	22	2	7	5	26	46	320	230		
NY,S	11,711	997	12	2	49	27	138	49	-	13	2	5	10	31	28	429	202		
NY,W	1,965	775	38	21	17	5	41	4	-	8	2	2	24	44	10	539	20		
VT	283	116	3	7	3	4	15	-	-	-	1	-	1	6	-	64	12		
3RD	25,877	3,390	142	113	131	120	420	459	1	183	22	24	158	82	25	1,208	302		
DE	1,599	58	4	-	3	1	3	-	-	-	-	-	-	3	1	36	7		
NU	9,167	1,045	83	17	45	38	108	150	-	64	5	11	96	31	7	254	136		
PA,E	9,631	838	11	11	45	41	155	21	-	-	-	8	3	5	9	438	91		
PA,M	2,599	851	2	34	15	17	47	262	1	119	5	1	59	14	-	254	21		
PA,W	2,624	555	42	28	22	22	102	26	-	-	12	4	-	29	7	225	36		
VI	257	43	-	23	1	1	5	-	-	-	-	-	-	-	1	1	11		
4TH	40,783	4,253	72	33	166	130	1,149	243	2	84	17	96	5	378	30	1,554	294		
MD	4,051	820	13	19	43	39	200	1	-	1	-	40	4	73	7	265	115		
NC,E	2,014	891	13	1	14	18	166	109	-	47	9	44	-	223	2	218	27		
NC,M	1,110	319	5	-	7	6	149	15	-	3	-	-	-	23	2	103	6		
NC,W	1,222	382	6	1	7	6	129	3	-	-	-	-	-	15	3	203	12		
SC	5,195	657	15	5	25	4	190	1	2	2	-	-	-	14	8	368	23		
VA,E	3,523	476	16	3	44	45	160	16	-	6	8	7	1	5	6	85	74		
VA,W	1,184	304	1	2	9	5	88	25	-	9	-	4	-	14	-	138	11		
WA,N	649	178	2	2	9	3	40	34	-	3	-	4	-	9	-	59	15		
WA,S	21,835	226	1	2	11	4	27	39	-	13	-	1	-	2	-	115	11		

Table C-3. (March 31, 2015—Continued)

Circuit and District	Total Civil Cases	Total U.S. Civil Cases	Contract	Real Property	Tort Action	Civil Rights	U.S. Cases										Social Security	All Other
							Prisoner Petitions					Habeas Corpus		Habeas Corpus Alien Detainee		Fortifures and Penalties		
							Motions to Vacate Sentence	Habeas Corpus General	Death Penalty	Prison Civil Rights	Prison Condition	Mandamus and Other	Habeas Corpus Alien Detainee	Fortifures and Penalties	Labor Suits	Social Security	All Other	
<b>5TH</b>	<b>30,077</b>	<b>3,893</b>	<b>321</b>	<b>56</b>	<b>197</b>	<b>208</b>	<b>997</b>	<b>321</b>	<b>4</b>	<b>240</b>	<b>10</b>	<b>25</b>	<b>80</b>	<b>143</b>	<b>24</b>	<b>892</b>	<b>375</b>	
LA,E	2,985	206	4	8	40	15	35	4	-	1	-	1	-	3	1	68	26	
LA,M	842	77	2	-	11	3	20	-	-	-	-	-	-	5	-	26	10	
LA,W	3,423	315	7	14	21	6	33	89	-	17	6	4	29	5	2	71	11	
MS,N	710	123	-	3	6	5	12	-	-	1	-	-	-	3	2	92	1	
M,S,S	1,715	194	-	8	11	16	38	9	-	1	3	-	-	10	6	70	12	
TX,N	6,477	885	10	13	19	37	220	95	-	38	1	11	5	25	7	177	104	
TX,E	4,322	450	133	3	12	9	95	60	3	30	1	4	-	19	7	180	31	
TX,S	6,237	857	4	5	35	48	291	19	1	19	-	-	25	43	7	107	109	
TX,W	3,366	786	13	2	42	69	253	45	-	133	-	5	21	30	1	101	71	
<b>6TH</b>	<b>24,114</b>	<b>4,184</b>	<b>209</b>	<b>197</b>	<b>106</b>	<b>105</b>	<b>593</b>	<b>103</b>	<b>1</b>	<b>31</b>	<b>25</b>	<b>8</b>	<b>20</b>	<b>164</b>	<b>48</b>	<b>2,315</b>	<b>259</b>	
KY,E	1,296	516	-	93	11	6	56	78	-	16	22	3	-	22	3	194	12	
KY,W	1,579	196	4	40	12	12	34	2	-	2	-	3	-	7	-	64	20	
MI,E	4,981	922	153	22	27	23	86	7	1	2	-	-	2	42	5	476	76	
MI,W	1,647	399	1	3	6	9	56	-	-	1	3	-	9	1	11	277	22	
OH,N	4,655	614	15	5	19	18	71	9	-	4	-	2	6	28	10	395	33	
OH,S	5,027	718	7	11	17	14	49	2	-	2	-	1	3	33	9	515	54	
TN,E	1,362	306	5	10	4	7	134	1	-	2	-	-	-	6	4	120	13	
TN,M	2,173	250	4	7	5	10	31	-	-	2	-	-	-	16	2	158	15	
TN,W	1,394	263	20	6	5	6	76	4	-	1	-	2	-	9	4	116	14	
<b>7TH</b>	<b>23,089</b>	<b>3,172</b>	<b>212</b>	<b>125</b>	<b>103</b>	<b>119</b>	<b>398</b>	<b>78</b>	<b>-</b>	<b>12</b>	<b>35</b>	<b>11</b>	<b>2</b>	<b>115</b>	<b>25</b>	<b>1,598</b>	<b>339</b>	
IL,N	11,578	1,091	186	24	57	66	116	6	-	4	5	10	2	25	2	355	226	
IL,C	1,407	255	4	44	1	4	53	-	-	1	1	1	-	8	9	128	9	
IL,S	1,931	265	2	24	10	9	52	54	-	8	7	-	-	11	2	79	12	
IN,N	2,610	383	2	3	9	7	39	-	-	8	-	-	-	29	3	279	12	
IN,S	2,969	598	11	14	15	22	79	7	-	-	22	-	-	17	4	386	21	
WI,E	1,691	326	5	8	5	8	40	1	-	-	-	-	-	12	2	210	35	
WI,W	903	254	2	8	6	8	19	10	-	-	-	-	-	13	3	161	24	
<b>8TH</b>	<b>16,194</b>	<b>3,245</b>	<b>36</b>	<b>58</b>	<b>84</b>	<b>69</b>	<b>464</b>	<b>137</b>	<b>1</b>	<b>34</b>	<b>54</b>	<b>13</b>	<b>2</b>	<b>89</b>	<b>29</b>	<b>1,998</b>	<b>177</b>	
AR,E	1,862	426	4	1	4	9	22	35	-	9	24	2	-	12	1	291	12	
AR,W	1,097	464	3	3	3	-	30	1	-	1	-	-	-	5	-	409	10	
IA,N	620	266	2	9	1	-	47	2	-	-	-	-	-	4	-	195	5	
IA,S	663	186	1	7	5	1	61	3	-	-	-	-	-	3	3	92	10	
MN	6,041	339	11	10	17	11	54	40	-	4	-	4	2	10	12	127	41	
MO,E	2,262	410	3	4	11	32	88	6	-	7	-	-	-	14	4	211	26	
MO,W	2,307	911	6	5	19	6	86	40	1	9	30	6	-	20	3	630	50	
NE	662	102	2	9	6	4	29	2	-	-	-	-	-	17	4	15	14	
ND	288	50	3	5	1	-	27	-	-	1	-	-	-	2	1	8	2	
SD	382	91	1	5	17	6	20	8	-	3	-	1	-	2	1	20	7	

**Table C-3. (March 31, 2015—Continued)**

Circuit and District	Private Cases																
	Total Private Civil Cases	Contract	Real Property	FELA <sup>1</sup>	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury	Other Tort Actions	Civil Rights	Prisoner Petitions			Intellectual Property	Labor Suits	All Other		
										Habeas Corpus General	Death Penalty	Conditions and Civil Rights				Mandamus and Other	
<b>5TH</b>	<b>26,184</b>	<b>3,935</b>	<b>1,269</b>	<b>15</b>	<b>379</b>	<b>785</b>	<b>5,383</b>	<b>418</b>	<b>2,671</b>	<b>2,648</b>	<b>34</b>	<b>2,998</b>	<b>46</b>	<b>2,225</b>	<b>1,405</b>	<b>1,973</b>	
LA,E	2,779	549	29	5	235	179	671	74	278	267	1	210	4	29	96	152	
LAM	765	111	9	-	9	56	121	20	146	65	-	160	1	8	18	41	
LA,W	3,108	206	27	6	60	89	1,794	26	210	239	1	346	6	11	34	53	
MS,N	587	91	10	-	1	37	74	8	142	78	-	91	-	9	23	23	
M,S,S	1,521	282	29	-	8	89	204	26	284	190	-	282	3	14	56	53	
TX,N	5,592	684	372	1	-	71	1,849	83	436	549	12	532	22	178	272	531	
TX,E	3,872	259	138	2	8	72	152	42	223	378	6	650	1	1,668	103	170	
TX,S	5,380	1,356	401	-	58	104	378	96	591	549	7	396	4	158	583	699	
TX,W	2,580	397	254	1	-	88	140	43	361	333	6	331	5	150	220	251	
<b>6TH</b>	<b>19,930</b>	<b>1,805</b>	<b>466</b>	<b>21</b>	<b>47</b>	<b>328</b>	<b>5,446</b>	<b>268</b>	<b>2,739</b>	<b>1,701</b>	<b>18</b>	<b>2,421</b>	<b>19</b>	<b>1,070</b>	<b>1,611</b>	<b>1,970</b>	
KY,E	780	107	12	1	3	43	119	19	103	99	1	91	2	13	71	96	
KY,W	1,383	152	23	1	12	47	405	38	163	68	1	159	3	24	145	142	
MI,E	4,059	583	227	4	17	50	186	48	672	573	-	254	2	285	433	725	
MI,W	1,248	107	52	-	2	10	35	15	175	180	-	336	2	102	68	164	
OH,N	4,041	259	26	7	4	38	1,953	50	386	255	2	148	5	296	305	307	
OH,S	4,309	231	30	6	1	30	2,411	60	456	202	6	125	3	264	282	216	
TN,E	1,056	116	21	2	1	40	94	17	254	75	3	200	-	21	86	126	
TN,M	1,923	138	27	-	3	37	77	13	313	112	1	890	-	38	144	130	
TN,W	1,131	112	42	-	4	33	166	8	217	137	4	218	2	27	97	64	
<b>7TH</b>	<b>19,917</b>	<b>1,400</b>	<b>337</b>	<b>19</b>	<b>18</b>	<b>212</b>	<b>4,027</b>	<b>302</b>	<b>2,757</b>	<b>1,021</b>	<b>4</b>	<b>3,807</b>	<b>8</b>	<b>1,002</b>	<b>2,138</b>	<b>2,865</b>	
IL,N	10,487	787	252	9	7	73	1,774	157	1,365	199	-	1,907	4	734	1,468	1,751	
IL,C	1,152	73	35	-	1	31	47	8	209	50	-	558	-	16	75	73	
IL,S	1,666	69	10	-	7	7	757	83	103	45	-	421	1	7	52	73	
IN,N	2,227	115	4	2	1	42	1,153	7	313	158	-	174	1	25	97	135	
IN,S	2,371	199	14	1	1	48	200	23	484	372	4	280	-	107	233	405	
WI,E	1,365	95	8	-	-	3	62	15	186	153	-	308	2	67	132	329	
WI,W	649	62	14	-	1	8	34	9	97	44	-	159	-	46	81	99	
<b>8TH</b>	<b>12,949</b>	<b>1,283</b>	<b>164</b>	<b>20</b>	<b>9</b>	<b>165</b>	<b>3,006</b>	<b>1,657</b>	<b>1,407</b>	<b>718</b>	<b>5</b>	<b>1,715</b>	<b>11</b>	<b>806</b>	<b>721</b>	<b>1,262</b>	
AR,E	1,436	117	9	4	4	33	64	20	180	187	1	636	-	6	73	102	
AR,W	633	91	12	2	-	18	45	13	63	18	1	285	-	5	27	53	
IA,N	354	39	4	1	-	3	29	94	48	31	-	90	-	5	24	25	
IA,S	477	63	9	3	-	2	31	72	83	31	-	67	1	16	41	38	
MA,N	5,702	295	43	-	2	14	2,346	1,222	392	88	-	209	-	667	201	362	
MO,E	1,872	242	22	-	3	39	272	95	260	151	1	215	4	46	210	318	
MO,W	1,396	228	37	4	-	26	142	39	196	121	1	93	4	38	102	243	
NE	550	87	11	2	-	8	24	40	132	35	1	17	-	13	26	78	
ND	238	77	14	3	-	8	24	10	23	19	-	17	-	6	11	26	
SD	291	44	3	1	-	14	29	52	30	38	-	51	2	4	6	17	

**Table C-3. (March 31, 2015—Continued)**

Circuit and District	Total Civil Cases	Total U.S. Civil Cases	Contract	Real Property	Tort Action	Civil Rights	U.S. Cases											
							Prisoner Petitions					Habeas Corpus		Fortitures and Penalties		Labor Suits	Social Security	All Other
							Motions to Vacate Sentence	Habeas Corpus General	Death Penalty	Prison Civil Rights	Prison Condition	Mandamus and Other	Habeas Corpus Alien Detainee	Fortitures and Penalties	Labor Suits	Social Security	All Other	
<b>9TH</b>	<b>43,215</b>	<b>8,023</b>	<b>572</b>	<b>85</b>	<b>421</b>	<b>272</b>	<b>672</b>	<b>350</b>	<b>-</b>	<b>75</b>	<b>67</b>	<b>58</b>	<b>157</b>	<b>305</b>	<b>66</b>	<b>3,835</b>	<b>1,088</b>	
AK	310	117	4	1	20	4	21	1	-	-	1	-	-	6	1	32	26	
AZ	3,877	888	22	4	41	48	169	106	-	17	64	19	35	22	6	272	63	
CA,N	5,634	499	27	5	46	25	35	5	-	1	-	-	11	12	18	181	133	
CA,E	4,943	772	13	5	27	15	45	87	-	19	-	2	9	36	6	418	90	
CA,C	14,390	2,527	466	20	103	82	131	97	-	27	-	9	16	89	15	1,044	428	
CA,S	3,234	416	8	10	65	35	69	19	-	5	2	22	7	26	2	84	62	
HI	598	79	1	-	16	11	14	-	-	4	-	1	2	2	-	9	19	
ID	566	80	2	2	16	2	14	-	-	-	-	-	-	3	2	37	16	
MT	656	172	4	16	16	-	47	1	-	-	-	-	-	3	4	50	31	
NV	2,973	298	8	5	17	20	35	4	-	1	-	-	3	48	4	105	48	
OR	2,092	650	1	10	21	7	25	-	-	-	-	2	1	30	5	499	49	
WA,E	836	449	5	1	7	5	23	3	-	-	-	-	-	7	1	384	13	
WA,W	3,050	1,061	10	6	39	17	43	25	-	1	-	2	73	18	2	720	105	
GUAM	30	11	1	-	1	-	1	2	-	-	-	1	-	3	-	-	2	
NM,I	26	4	-	-	-	1	-	-	-	-	-	-	-	-	-	-	3	
<b>10TH</b>	<b>11,548</b>	<b>2,282</b>	<b>39</b>	<b>98</b>	<b>104</b>	<b>57</b>	<b>259</b>	<b>44</b>	<b>-</b>	<b>14</b>	<b>22</b>	<b>8</b>	<b>16</b>	<b>136</b>	<b>9</b>	<b>1,296</b>	<b>180</b>	
CO	3,240	448	10	7	17	12	37	2	-	3	1	1	12	42	5	258	41	
KS	2,925	450	-	41	10	10	88	34	-	3	21	3	-	34	3	196	7	
NM	1,155	322	2	2	33	15	36	1	-	-	-	1	3	38	-	155	36	
OK,N	799	279	4	16	5	3	30	-	-	-	-	1	1	6	-	203	10	
OK,E	585	294	-	12	-	4	9	1	-	-	-	-	-	1	-	257	10	
OK,W	1,507	262	7	15	22	3	27	2	-	5	-	1	-	9	-	144	27	
UT	1,095	183	15	2	14	9	15	1	-	3	-	-	-	5	1	80	38	
WY	242	44	1	3	3	1	17	3	-	-	-	1	-	1	-	3	11	
<b>11TH</b>	<b>31,382</b>	<b>5,362</b>	<b>305</b>	<b>35</b>	<b>154</b>	<b>157</b>	<b>1,044</b>	<b>507</b>	<b>1</b>	<b>54</b>	<b>19</b>	<b>65</b>	<b>155</b>	<b>156</b>	<b>37</b>	<b>2,258</b>	<b>415</b>	
AL,N	2,494	588	5	2	10	20	56	50	-	7	2	1	87	15	2	306	25	
AL,M	1,270	160	3	-	10	5	37	3	-	1	1	-	-	7	-	84	9	
AL,S	651	163	-	3	2	2	38	1	-	-	-	2	-	5	-	102	7	
FL,N	1,950	312	3	3	12	16	85	40	1	-	6	1	16	12	1	99	17	
FL,M	8,587	1,849	108	6	63	35	285	235	-	32	8	14	1	22	12	902	126	
FL,S	8,942	1,043	159	14	18	36	330	68	-	1	-	9	3	31	10	215	149	
GA,N	5,088	734	16	5	20	31	83	54	-	12	-	37	1	40	7	357	71	
GA,M	1,279	245	5	-	8	6	48	3	-	1	-	-	46	12	2	111	3	
GA,S	1,121	268	6	2	11	6	82	53	-	-	2	1	1	12	2	82	8	



Table C-3. (March 31, 2015—Continued)

Circuit and District	Private Cases																
	Total Private Civil Cases	Contract	Real Property	FELA <sup>1</sup>	Marine Personal Injury	Motor Vehicle Personal Injury	Other Personal Injury	Other Tort Actions	Civil Rights	Prisoner Petitions			Mandamus and Other	Intellectual Property	Labor Suits	All Other	
										Habeas Corpus General	Death Penalty	Conditions and Civil Rights					
9TH	35,192	3,881	2,035	13	103	200	2,312	778	6,965	3,807	46	4,708	106	2,673	2,480	5,095	
AK	193	43	1	-	8	3	26	5	35	17	-	24	-	1	10	20	
AZ	2,989	317	83	1	1	22	128	40	452	293	26	890	6	101	192	437	
CA,N	5,135	516	268	-	10	14	267	139	822	480	1	773	15	514	528	788	
CA,E	4,171	244	187	-	1	10	147	30	1,086	692	1	1,193	15	42	140	382	
CAC	11,863	1,214	1,039	2	15	46	665	325	2,527	1,339	12	494	4	1,419	883	1,879	
CA,S	2,818	224	95	-	6	5	474	57	492	246	-	306	1	181	127	604	
HI	519	81	29	-	19	5	83	31	126	10	-	40	-	24	28	43	
ID	486	77	14	2	-	10	23	10	95	70	1	95	-	14	16	59	
MT	484	94	6	1	-	10	52	9	46	66	-	137	2	6	25	30	
NV	2,675	377	151	-	-	46	205	44	553	327	2	327	8	101	100	434	
OR	1,442	187	51	3	5	18	98	27	332	133	2	148	52	119	127	140	
WA,E	387	59	9	-	-	2	26	9	83	33	-	89	2	16	12	47	
WA,W	1,989	439	102	3	37	9	112	49	294	99	1	190	1	135	290	228	
GUAM	19	5	-	-	-	-	2	2	4	2	-	2	-	-	-	2	
NMI	22	4	-	-	1	-	4	1	8	-	-	-	-	-	2	2	
10TH	9,266	1,459	935	15	3	234	703	728	1,581	672	2	981	17	456	426	1,054	
CO	2,792	470	18	5	-	40	154	38	427	303	-	419	2	267	140	509	
KS	2,475	148	844	2	1	48	119	605	207	62	-	124	9	34	80	192	
NM	833	133	13	3	-	31	83	16	288	36	-	110	-	9	47	64	
OK,N	520	90	5	-	1	21	48	15	144	53	-	41	1	6	43	51	
OK,E	291	54	4	1	1	17	23	3	85	36	-	36	-	3	2	26	
OK,W	1,245	307	14	-	-	46	123	30	266	138	1	161	5	20	40	94	
UT	912	220	30	1	-	13	108	12	138	26	-	73	-	116	69	106	
WY	198	37	7	3	-	18	45	9	26	18	-	17	-	1	5	12	
11TH	26,020	3,070	1,007	9	385	436	1,766	409	5,424	2,154	48	3,330	122	1,240	3,410	3,210	
AL,N	1,906	240	35	4	-	44	139	29	585	117	6	353	2	25	159	168	
AL,M	1,110	84	7	-	-	36	48	9	219	77	7	484	19	3	28	89	
AL,S	488	104	19	-	8	19	37	4	89	38	1	80	-	3	26	60	
FL,N	1,638	113	34	1	2	23	64	13	590	236	2	340	9	10	146	55	
FL,M	6,738	769	130	2	29	95	366	62	1,088	850	25	753	24	481	991	1,073	
FL,S	7,899	1,065	150	-	343	53	464	194	1,787	373	1	314	18	527	1,569	1,041	
GAN	4,354	530	602	1	1	114	431	76	711	281	5	433	38	161	410	560	
GAM	1,034	74	17	1	-	27	167	10	205	105	1	293	10	16	37	71	
GAS	853	91	13	-	2	25	50	12	150	77	-	280	2	14	44	93	

<sup>1</sup> FELA = Federal Employers Liability Act.

**Table C-5.  
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases  
Terminated, by District and Method of Disposition,  
During the 12-Month Period Ending March 31, 2015**

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>TOTAL</b>	<b>204,036</b>	<b>8.6</b>	<b>42,464</b>	<b>5.2</b>	<b>132,724</b>	<b>8.5</b>	<b>26,286</b>	<b>12.8</b>	<b>2,562</b>	<b>25.2</b>
<b>DC</b>	<b>1,757</b>	<b>7.8</b>	<b>791</b>	<b>5.8</b>	<b>925</b>	<b>9.0</b>	<b>17</b>	<b>32.9</b>	<b>24</b>	<b>48.3</b>
<b>1ST</b>	<b>5,951</b>	<b>12.2</b>	<b>1,319</b>	<b>5.3</b>	<b>3,205</b>	<b>13.3</b>	<b>1,342</b>	<b>15.2</b>	<b>85</b>	<b>26.2</b>
ME	482	8.1	150	5.9	306	8.7	15	18.8	11	20.0
MA	2,527	9.2	671	3.3	745	8.3	1,065	14.9	46	27.8
NH	471	8.1	89	3.9	230	7.2	143	14.2	9	-
RI	1,633	23.0	280	16.8	1,319	26.1	31	15.1	3	-
PR	838	13.4	129	7.4	605	13.2	88	20.5	16	29.7
<b>2ND</b>	<b>20,942</b>	<b>9.6</b>	<b>3,266</b>	<b>4.7</b>	<b>12,522</b>	<b>9.5</b>	<b>4,880</b>	<b>12.7</b>	<b>274</b>	<b>33.7</b>
CT	1,738	10.4	498	4.9	704	9.8	497	19.0	39	39.4
NY,N	1,225	10.8	202	3.3	676	12.0	326	14.6	21	32.6
NY,E	6,689	9.5	1,419	5.8	3,715	9.5	1,466	11.9	89	33.6
NY,S	9,677	8.9	923	3.7	6,134	8.2	2,512	11.9	108	30.3
NY,W	1,378	11.4	212	4.8	1,078	12.3	75	17.9	13	43.4
VT	235	10.8	12	3.3	215	10.9	4	-	4	-
<b>3RD</b>	<b>22,605</b>	<b>6.7</b>	<b>2,627</b>	<b>3.9</b>	<b>15,791</b>	<b>5.6</b>	<b>3,944</b>	<b>12.2</b>	<b>243</b>	<b>28.1</b>
DE	1,945	10.7	576	5.2	1,076	12.2	256	18.2	37	34.4
NJ	6,696	6.9	512	3.8	3,849	4.5	2,280	13.6	55	36.4
PA,E	10,048	5.0	724	3.2	7,957	4.1	1,265	9.2	102	19.9
PA,M	1,750	9.8	381	6.0	1,276	10.5	69	16.9	24	23.0
PA,W	1,936	7.0	293	2.8	1,621	8.0	13	18.2	9	-
VI	230	14.0	141	13.1	12	11.4	61	13.3	16	38.2
<b>4TH</b>	<b>16,363</b>	<b>7.3</b>	<b>2,494</b>	<b>5.8</b>	<b>12,408</b>	<b>7.0</b>	<b>1,296</b>	<b>10.3</b>	<b>165</b>	<b>18.2</b>
MD	3,083	7.6	482	7.3	1,924	5.9	643	12.5	34	21.0
NCE	1,225	8.2	565	5.5	642	10.6	8	-	10	29.2
NC,M	729	12.5	416	9.6	277	17.8	34	17.6	2	-
NC,W	889	8.6	205	7.4	614	8.3	59	16.8	11	20.3
SC	2,312	9.2	179	3.3	2,073	9.7	36	9.2	24	29.3
VA,E	2,098	5.2	423	3.7	1,185	4.4	438	7.8	52	16.0
VA,W	604	10.0	141	5.2	411	11.5	40	11.2	12	17.9
WA,N	481	11.1	58	8.1	408	11.1	8	-	7	-
WA,S	4,942	3.2	25	1.8	4,874	3.0	30	17.1	13	21.1

Table C-5. (March 31, 2015)

Circuit and District	Total Cases			No Court Action			Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial	Trial				
					Number of Cases	Median Time Interval in Months		Number of Cases	Median Time Interval in Months			
<b>5TH</b>	<b>19,429</b>	<b>8.5</b>	<b>5,294</b>	<b>5.8</b>	<b>11,459</b>	<b>8.4</b>	<b>2,360</b>	<b>12.7</b>	<b>316</b>	<b>22.7</b>		
LAE	2,736	10.3	110	3.3	1,455	9.0	1,117	13.8	54	17.7		
LAM	608	11.5	63	7.6	481	10.8	43	22.2	21	35.5		
LA,W	1,140	12.0	336	7.1	638	12.5	148	19.1	18	32.1		
MS,N	579	10.1	147	7.4	260	10.3	157	12.6	15	22.9		
MSS	1,260	10.5	714	9.6	485	10.7	32	19.1	29	21.5		
TX,N	3,277	6.7	641	5.0	2,587	7.1	4	-	45	26.1		
TX,E	2,992	8.3	1,004	6.1	1,939	9.4	23	22.8	26	22.1		
TX,S	4,648	6.9	1,644	4.4	2,185	7.9	734	8.2	85	22.4		
TX,W	2,189	6.9	635	6.2	1,429	6.5	102	16.1	23	20.5		
<b>6TH</b>	<b>17,738</b>	<b>11.3</b>	<b>6,106</b>	<b>8.3</b>	<b>7,946</b>	<b>11.6</b>	<b>3,500</b>	<b>12.6</b>	<b>186</b>	<b>26.5</b>		
KYE	1,082	9.6	134	7.2	933	9.7	10	26.3	5	-		
KY,W	1,021	8.5	232	3.3	732	9.0	47	15.4	10	17.1		
MI,E	3,942	8.8	896	3.3	1,354	6.2	1,659	13.4	33	22.5		
MI,W	1,004	9.1	142	3.3	680	10.0	176	12.1	6	-		
OH,N	4,960	18.6	2,315	23.7	1,767	25.7	861	9.9	17	22.2		
OH,S	2,417	9.3	1,173	5.6	562	11.1	654	12.4	28	16.5		
TNE	1,185	12.9	405	9.5	666	13.2	75	20.6	39	55.5		
TNM	1,233	12.3	193	8.2	1,009	12.5	3	-	28	25.3		
TN,W	894	11.2	616	10.3	243	11.8	15	26.9	20	27.4		
<b>7TH</b>	<b>23,070</b>	<b>14.2</b>	<b>4,486</b>	<b>6.3</b>	<b>16,467</b>	<b>18.5</b>	<b>1,939</b>	<b>12.0</b>	<b>178</b>	<b>27.3</b>		
IL,N	8,489	7.4	2,190	4.8	5,779	8.3	427	10.6	93	28.8		
IL,C	704	10.5	331	7.7	358	13.0	8	-	7	-		
IL,S	8,171	39.0	1,020	15.9	7,136	41.1	8	-	7	-		
IN,N	1,804	10.4	227	3.7	1,096	9.5	458	16.0	23	28.5		
IN,S	2,109	8.7	301	4.4	1,006	6.4	786	11.3	16	27.3		
WI,E	1,098	6.1	232	3.0	825	7.0	22	12.6	19	26.2		
WI,W	695	8.5	185	3.6	267	7.7	230	11.0	13	18.2		
<b>8TH</b>	<b>10,396</b>	<b>9.4</b>	<b>3,830</b>	<b>5.1</b>	<b>5,350</b>	<b>10.7</b>	<b>1,053</b>	<b>13.7</b>	<b>163</b>	<b>25.2</b>		
ARE	1,131	11.8	271	15.1	831	11.0	7	-	22	18.7		
AR,W	839	12.0	152	11.9	664	12.0	2	-	21	22.7		
IA,N	500	4.9	164	0.9	327	7.1	5	-	4	-		
IA,S	501	8.1	76	4.0	261	5.1	156	15.4	8	-		
MN	2,689	7.6	1,028	2.3	892	12.2	737	12.9	32	24.4		
MO,E	1,893	8.4	810	4.5	1,053	10.7	1	-	29	24.8		
MO,W	1,898	9.9	1,164	8.3	597	11.8	121	14.2	16	28.9		
NE	499	7.4	44	3.8	423	7.4	15	20.4	17	27.2		
ND	205	8.2	11	0.9	190	8.7	1	-	3	-		
SD	241	9.2	110	1.3	112	15.5	8	-	11	33.4		

**Table C-5. (March 31, 2015—Continued)**

Circuit and District	Total Cases		No Court Action		Court Action						Trial	
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Number of Cases	Median Time Interval in Months		
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months				
<b>9TH</b>	<b>32,381</b>	<b>7.2</b>	<b>7,961</b>	<b>4.5</b>	<b>20,810</b>	<b>7.2</b>	<b>3,116</b>	<b>13.6</b>	<b>494</b>	<b>23.8</b>		
AK	249	8.1	47	6.2	196	8.1	1	13.6	5	-		
AZ	2,242	7.9	136	2.9	1,619	6.4	454	14.5	33	27.1		
CAN	4,439	7.9	873	4.3	2,187	6.6	1,315	13.3	64	30.0		
CAE	2,658	8.5	874	6.0	1,678	9.7	73	17.3	33	29.6		
CAC	11,755	5.4	3,672	4.5	7,730	5.6	181	14.3	172	19.3		
CA,S	2,164	6.2	349	3.0	1,079	4.9	700	12.9	36	34.3		
HI	550	7.8	274	5.9	238	7.6	27	21.0	11	22.6		
ID	363	10.8	19	2.3	263	10.1	74	17.3	7	-		
MT	414	9.7	136	4.4	126	8.1	140	14.0	12	24.2		
NV	2,139	9.0	224	5.2	1,776	9.7	120	7.8	19	37.1		
OR	1,934	11.1	501	6.7	1,381	12.1	10	14.5	42	21.6		
WA,E	663	9.5	221	4.9	422	10.6	6	-	14	32.3		
WA,W	2,769	7.4	613	3.0	2,104	8.0	8	-	44	18.8		
GUAM	21	19.1	6	-	8	-	6	-	1	-		
NMI	21	9.4	16	9.1	3	-	1	-	1	-		
<b>10TH</b>	<b>8,599</b>	<b>9.4</b>	<b>1,936</b>	<b>4.0</b>	<b>5,340</b>	<b>10.2</b>	<b>1,164</b>	<b>13.3</b>	<b>159</b>	<b>26.9</b>		
CO	2,705	7.0	840	4.1	1,729	8.3	75	19.1	61	28.4		
KS	1,305	9.0	394	4.2	795	10.1	85	20.8	31	24.6		
NM	1,020	11.0	69	1.7	451	8.8	487	13.1	13	28.0		
OK,N	649	10.9	55	2.6	581	11.4	10	23.7	3	-		
OK,E	454	14.3	25	3.1	423	14.7	2	-	4	-		
OK,W	1,116	8.2	293	4.2	462	8.7	343	10.2	18	20.3		
UT	1,138	11.9	196	4.0	857	12.9	67	23.3	18	34.7		
WV	212	12.3	64	5.2	42	13.6	95	13.2	11	21.3		
<b>11TH</b>	<b>24,805</b>	<b>6.8</b>	<b>2,354</b>	<b>4.3</b>	<b>20,501</b>	<b>6.6</b>	<b>1,675</b>	<b>12.8</b>	<b>275</b>	<b>21.9</b>		
AL,N	2,195	12.8	49	1.4	2,095	12.7	29	25.7	22	25.6		
AL,M	651	9.0	68	4.9	546	8.9	27	20.7	10	19.8		
AL,S	443	7.7	68	3.0	360	7.8	9	-	6	-		
FL,N	1,099	7.1	36	4.4	1,025	7.1	15	12.2	23	13.2		
FL,M	7,094	8.5	570	6.4	6,294	8.4	154	15.8	76	23.5		
FL,S	7,724	4.7	883	4.1	6,648	4.7	110	8.7	83	15.7		
GAN	4,074	6.6	334	2.4	2,385	4.5	1,316	12.1	39	28.0		
GAM	930	12.2	198	7.7	711	12.4	9	-	12	25.5		
GAS	595	9.6	148	9.1	437	9.6	6	-	4	-		

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.

**TAB-4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SANTARUS, INC., and THE CURATORS )  
OF THE UNIVERSITY OF MISSOURI, )

Plaintiffs, )

v. )

PAR PHARMACEUTICAL, INC., )

Defendant. )

C.A. No. 07-551-GMS

**MEMORANDUM**

**I. INTRODUCTION**

In this consolidated patent infringement action, plaintiffs Santarus, Inc. ("Santarus") and the Curators of the University of Missouri (the "University") (collectively, "the plaintiffs") allege that defendant Par Pharmaceutical, Inc.'s ("Par") proposed generic pharmaceutical product infringes the asserted claims of the patents-in-suit. (D.I. 1.) The court held a five-day bench trial in this matter on July 13 through July 17, 2009. (D.I. 168-172.) After the fourth day of trial, the court ruled that Par's proposed products infringed the asserted claims of the patents-in-suit. (See D.I. 171 at 936-941.) Presently before the court are the parties' post-trial proposed findings of fact and conclusions of law concerning the validity and enforceability of the patents-in-suit. (D.I. 173-174.)

Pursuant to Fed. R. Civ. P. 52(a), and after having considered the entire record in this case and the applicable law, the court concludes that: (A) the patents-in-suit are invalid due to obviousness; (B) the patents-in-suit are not unenforceable due to inequitable conduct; and (C) an award for attorneys' fees and costs is not warranted in this case. The court further concludes that

alkali inorganic salts such as sodium bicarbonate<sup>13</sup> and benzimidazole compounds such as omeprazole that "exhibit[] excellent gastric antisecretory, gastric mucosa-producing, and antiulcer activities." Makino Patent col. 11:38-41. The Makino Patent states that the resulting mixture:

can be made up into dosage forms suited for oral administration, such as tablets, capsules, powders, granules, and fine granules, by per se known means.

Tablets, granules and fine granules may be coated by a per se known method for the purpose of masking of the taste or providing them with enteric or sustained release property.

Makino Patent col. 11:1-8. The Yamasaka patent describes solid oral pharmaceutical compositions containing both alkali salts such as sodium bicarbonate and benzimidazole compounds that "show[] a prominent inhibitory action on secretion of gastric acid."<sup>14</sup> See

---

<sup>13</sup> Both the Makino Patent and the Yamasaka Patent use the term "sodium hydrogen bicarbonate," an alternative name for sodium carbonate. See Makino Patent col. 6:5-6; Yamasaka Patent col. 5:31.

<sup>14</sup> Santarus asserts that Dr. Allen, one of Par's expert witnesses, testified that "there there are substantial differences between omeprazole and leminoprazole." (D.I. 174.) This is, at best, a highly misleading statement and is one of the more egregious examples of the distortions of the record contained in Santarus' post-trial briefing. The portion of the transcript that Santarus cites for its characterization of Dr. Allen's testimony contains two questions that call for some comparison between leminoprazole and omeprazole. The first question and its response consisted of the following:

Q. You would agree that Lemino-prazole is substantially different from omeprazole; correct?

A. It is a ben --

Q. Thank you, sir.

Tr. 710:19-22. The second question, as reworded after an objection by Par's counsel, discussed a hypothetical, abstract patent containing leminoprazole and asked whether, for the purposes of the *doctrine of equivalents* rather than non-obviousness, the substitution of omeprazole would constitute a "substantial difference" such that it would not infringe under the doctrine of equivalents. (Tr. 711:5-25.) To that abstract, hypothetical question concerning a wholly

Yamasaka Patent col. 6:20-21.

Santarus attempts to distinguish the Makino and Yamasaka patents on two grounds. First, Santarus asserts that the purpose of the inorganic salts in these patents is to improve storage stability rather than to neutralize gastric acid in the stomach to protect a PPI, and that a person of ordinary skill in the art would thus not have been motivated to select the “operative ranges and ratios in the asserted claims.” (See D.I. 174 at 8.) This is not sufficient to distinguish these patents, however, because both patents plainly contemplated eventual oral administration of the compositions. *See, e.g.* Makino Patent col. 11:1-8; Yamasaka Patent col. 6:22-25. The amounts of buffer and PPI disclosed in the Makino and Yamasaka patents overlap with those of the asserted claims. (*E.g.* Makino Patent col. 10:29-34, 11:49-52; Yamasaka Patent col. 5:7-14, 6:38-40.) While neither patent explicitly states that sodium bicarbonate would prevent or inhibit the acid degradation of the benzimidazole, the antacidic properties of such salts are inherent and well-known to those skilled in the art. (See, e.g. Tr. 146:8-147:6.) The same alkali salts that

---

different area of patent law, Dr. Allen answered “I believe that is true.” *Id.* at 712:1. The court is troubled that on this basis, Santarus asserts in the context of its obviousness argument that Dr. Allen “testified” that leminoprazole and omeprazole were substantially different.

Sadly, such distortions are not confined to these examples – both at trial and in the post-trial briefing. At trial, counsel for Santarus implied that one of Par’s witnesses was “embarrassed” by his opinion in this case based on the witness’s statement during deposition that he hoped the confidentiality of his participation in the case would be respected. (See Tr. 909-910.) In its proposed findings of fact and conclusions of law, Santarus’ counsel represented to the court that Dr. Orlando was unable to explain the meaning of an article at trial. (See D.I. 174 at 12-13.) Counsel neglects to mention, however, that the testimony cited was in response to a question that counsel withdrew after Dr. Orlando asked to see the sentence in context. (See Tr. 917-18.) Furthermore, both parties’ briefs cite portions of the transcript that provide no support for the propositions for which they are cited. These tactics make it far more difficult and time-consuming for the court to examine the record when preparing its findings of fact and conclusions of law. Both the court and the parties suffer undue inconvenience when counsel engages in such tactics. Equally important, counsel who engage in such sharp practices run the risk of severely damaging their credibility and, thus, their effectiveness in the place and at the time when they most need to be viewed as honest and ethical brokers of the facts and the law.



TAB 6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

[CAPTION]

**SCHEDULING ORDER [PATENT]**

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on \_\_\_\_\_, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before \_\_\_\_\_.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before \_\_\_\_\_.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than \_\_\_\_\_. If defendant elects to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than \_\_\_\_\_.
4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on \_\_\_\_\_ at \_\_\_\_\_ .m. The *Markman* hearing is scheduled for a total of \_\_\_\_\_ hours with each side having \_\_\_\_\_ hours. The parties shall meet and confer regarding

narrowing and reducing the number of claim construction issues. On or before \_\_\_\_\_, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the court, a Joint Appendix of Intrinsic Evidence (the “Joint Appendix”) containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court’s website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on \_\_\_\_\_, and answering claim construction briefs on \_\_\_\_\_. Briefing will be presented pursuant to the court’s Local Rules.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before \_\_\_\_\_. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before \_\_\_\_\_. Rebuttal expert reports shall be served on or before \_\_\_\_\_. Expert Discovery in this case shall be initiated so that it will be completed on or before \_\_\_\_\_.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery<sup>1</sup> or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is **non-argumentative**, not to exceed two (2) pages outlining the issue(s) in dispute.

---

<sup>1</sup> Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court’s “Default Standard for Discovery, Including Discovery of Electronically Stored Information” (“ESI”) shall govern.

A sample letter can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal**. Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

**If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).**

7. **Settlement Conference**. Pursuant to 28 U.S.C. §636, this matter is referred to the United States Magistrate Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than \_\_\_\_\_. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than \_\_\_\_\_. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before \_\_\_\_\_. If the Court determines that argument is necessary to assist in the resolution of any request to file summary judgment, it shall notify the parties of the date and time on which the Court will conduct a telephone conference to hear such argument. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions:** To the extent permitted, all case or issue dispositive motions shall be served and filed within two weeks of the Court's decision to permit the filing of such motions. Briefing will be presented pursuant to the Court's Local Rules. The parties may agree on an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference.** On \_\_\_\_\_, beginning at \_\_\_\_\_ .m., the Court will hold a Pretrial Conference, in Chambers for Jury trials and via telephone for Bench trials, with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft, as well as the information defendant proposes to include in the proposed pretrial order. ***Motions in limine*<sup>2</sup>: NO MOTIONS IN LIMINE SHALL BE FILED**; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before and after the trial day). The parties shall file with the court the **joint** Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov) on or before \_\_\_\_\_.

14. **Trial.** This matter is scheduled for a \_\_\_\_\_ day (jury or bench) \_\_\_\_\_ trial beginning at 9:30 a.m. on \_\_\_\_\_.

---

<sup>2</sup> The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's [name of party] List of Evidentiary Issues It Intends To Raise."

15. **Scheduling:** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

---

UNITED STATES DISTRICT JUDGE

GMS Sample  
Patent Scheduling Order  
Rev. 02/25/2014

**TAB-5**



April 2012  
For Non-Patent Cases

**SCHEDULING ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 201\_, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.
2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before \_\_\_\_\_, 201\_.
3. Discovery.
  - a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before \_\_\_\_\_, 201\_.
  - b. Document Production. Document production shall be substantially complete by \_\_\_\_\_, 201\_.
  - c. Requests for Admission. A maximum of \_\_\_ requests for admission are permitted for each side.
  - d. Interrogatories. A maximum of \_\_\_ interrogatories, including contention interrogatories, are permitted for each side.
  - e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of \_\_\_ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before \_\_\_\_\_, 201\_. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before \_\_\_\_\_, 201\_. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Any expert depositions shall be taken no later than \_\_\_\_\_, 201\_.

ii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule a hearing. Unless otherwise ordered, by no later than forty-eight hours prior to the hearing, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than twenty-four hours prior to the hearing, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or

party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

6. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before \_\_\_\_\_, 201\_ [a date approximately four months prior to the pretrial conference]. No case dispositive motion under Rule 56 may be filed more than ten days before the above date without leave of the Court.

8. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

9. Pretrial Conference. On \_\_\_\_\_, 201\_, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at \_\_\_\_\_.m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by

the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

10. Motions *in Limine*. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

11. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5 p.m. on the third business day before the date of the final pretrial conference. The plaintiff should expect to submit to an email address to be designated each of the foregoing four documents in WordPerfect format.

12. Trial. This matter is scheduled for a \_\_\_ day \_\_\_ trial beginning at 9:30 a.m. on \_\_\_\_\_, 201\_, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their

respective cases.

13. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

---

UNITED STATES DISTRICT JUDGE

**TAB-6**

April 2012  
For Patent Cases

**SCHEDULING ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 201\_, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five days of the date of this Order.
2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before \_\_\_\_\_, 201\_.
3. Discovery.
  - a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before \_\_\_\_\_, 201\_.
  - b. Document Production. Document production shall be substantially complete by \_\_\_\_\_, 201\_.
  - c. Requests for Admission. A maximum of \_\_\_\_ requests for admission are permitted for each side.
  - d. Interrogatories. A maximum of \_\_\_\_ interrogatories, including contention



interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery. Each side is limited to a total of \_\_ hours of taking testimony by deposition upon oral examination.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district.

Exceptions to this general rule may be made by order of the Court or by agreement of the parties.

A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

f. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than forty-eight hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than twenty-four hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied

without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

6. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. Claim Construction Issue Identification. On or before \_\_\_\_\_, 201\_, the parties

shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than \_\_\_\_\_, 201\_. The Joint Claim Construction Chart, in Word or WordPerfect format, shall be e-mailed simultaneously with filing to rga\_civil@ded.uscourts.gov. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

8. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 20 pages, on \_\_\_\_\_. The Defendant shall serve, but not file, its answering brief, not to exceed 30 pages, on \_\_\_\_\_. The Plaintiff shall serve, but not file, its reply brief, not to exceed 20 pages, on \_\_\_\_\_. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 10 pages, on \_\_\_\_\_. No later than \_\_\_\_\_, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

**JOINT CLAIM CONSTRUCTION BRIEF**

- I. Agreed-upon Constructions
- II. Disputed Constructions
  - A. [TERM 1]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

B. [TERM 2]

1. Plaintiff's Opening Position
2. Defendant's Answering Position
3. Plaintiff's Reply Position
4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix.

9. Hearing on Claim Construction. Beginning at \_\_\_\_\_ .m. on \_\_\_\_\_, 201\_, the Court will hear argument on claim construction. Absent prior approval of the Court (which, if it is sought, must be done so by joint letter submission no later than the date on which answering claim construction briefs are due), the parties shall not present testimony at the argument, and the argument shall not exceed a total of three hours.

10. Disclosure of Expert Testimony.

a. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before \_\_\_\_\_, 201\_. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before \_\_\_\_\_, 201\_. Reply expert reports from the party with the initial burden of proof are due on or before \_\_\_\_\_. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their

experts' availability for deposition. Depositions of experts shall be completed on or before \_\_\_\_\_, 201\_.

b. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

11. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before \_\_\_\_\_, 201\_. No case dispositive motion under Rule 56 may be filed more than ten days before the above date without leave of the Court.

12. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

13. Pretrial Conference. On \_\_\_\_\_, 201\_, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at \_\_\_\_\_ .m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

14. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall

be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

15. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5 p.m. on the third business day before the date of the final pretrial conference. The parties shall submit simultaneously with filing each of the foregoing four documents in Word or WordPerfect format to rga\_civil@ded.uscourts.gov.

16. Trial. This matter is scheduled for a \_\_ day \_\_\_\_ trial beginning at 9:30 a.m. on \_\_\_\_\_, 201\_, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

17. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

---

UNITED STATES DISTRICT JUDGE

**TAB-7**



**Honorable Leonard P. Stark, District of Delaware**  
**Revised Procedures for Managing Patent Cases**  
(June 18, 2014)

As a result of the invaluable discussions in which I participated as part of the District of Delaware's Patent Study Group, and as previewed in my presentation to our District's chapter of the Federal Bar Association last month, I describe below the Revised Procedures that I will follow in handling patent cases.

**Applicability**

Unless otherwise ordered, these Revised Procedures will govern all *non-ANDA* patent cases filed on or after *July 1, 2014* that are assigned to me.

**General Principles**

Early investment of judicial resources, both from myself and Magistrate Judge Burke, will lead more often to identification of the "best" schedule for each case, promoting overall efficiency in the processing of cases on my docket.

Each patent case will initially be treated as its own case, even if it is related to a case or cases that have already been filed.

I have attempted to identify – and, as best as possible, reduce or eliminate – the areas that generally provide the highest likelihood for lengthy delays.

**Referral Order**

Within seven (7) days of a new patent case being assigned to me, my staff will docket the following Referral Order:

This case will be governed by Judge Stark's Revised Procedures for Managing Patent Cases (see [www.ded.uscourts.gov](http://www.ded.uscourts.gov)). In accordance with the Revised Procedures,

IT IS HEREBY ORDERED that:

1. any and all matters relating to scheduling, including entry of a Scheduling Order, are referred to Magistrate Judge Burke;
2. any and all motions to dismiss, stay, and/or transfer venue, relating to all or any part of the case, whenever such motions may be filed, are referred to Judge Burke for disposition or report and recommendation, to the full extent

permitted by the Constitution, statute, and rule; and

3. within seven (7) days of the date of this Referral Order, the plaintiff(s) shall file the Procedures Order, which is found on Judge Stark's website (see [www.ded.uscourts.gov](http://www.ded.uscourts.gov)).

**Procedures Order**

Within seven (7) days after the Court enters the Referral Order, the plaintiff(s) will be responsible for filing the following proposed Procedures Order, which the Court will then "so order" on the docket:

IT IS HEREBY ORDERED that, subject to any subsequent order of the Court, the following procedures shall govern proceedings in this matter:

1. "Discovery Matters" Procedures.
  - a. Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures.
  - b. Should counsel find, after good faith efforts – including *verbal* communication among Delaware and Lead Counsel for all parties to the dispute – that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Stark:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead

Counsel per party, participated in a verbal meet-and-confer (in person and/or by telephone) on the following date(s):

\_\_\_\_\_

Delaware Counsel: \_\_\_\_\_

Lead Counsel: \_\_\_\_\_

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

- c. On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.
- d. Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.
- e. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

2. Motions to Amend.

- a. Any motion to amend (including a motion for leave to amend) a pleading shall **NOT** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a “blackline” comparison to the prior pleading.
- b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.
- c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

3. Motions to Strike.

- a. Any motion to strike any pleading or other document shall **NOT** be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.
- b. Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.
- c. Within three (3) days thereafter, the moving party may file a reply letter, not to exceed

two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

4. Scheduling Order. The foregoing procedures shall be repeated in the scheduling order to be entered in this case.

#### **Scheduling and Case Management**

As noted in the Referral Order, scheduling will be managed by Judge Burke, who will have full authority to work with the parties to craft a schedule appropriate to the particular circumstances of each patent case. Judge Burke's decisions with respect to scheduling are subject to reversal only for abuse of discretion.

Within ten (10) days after any defendant has filed a responsive pleading (e.g., answer, counterclaim, cross-claim) or a motion in lieu of (or in addition to) a responsive pleading, my staff or Judge Burke's staff will docket the following Case Management Order:

At least one defendant in this matter having filed a responsive pleading or a motion in lieu of (or in addition to) a responsive pleading,

IT IS HEREBY ORDERED that:

The parties shall meet and confer and discuss, in person and/or by telephone, each of the matters listed on the Court's Case Management Checklist ("Checklist"). Within thirty (30) days of the date of this Order, the parties shall jointly file the Checklist and their proposed scheduling order (consistent with the Court's Revised Patent Form Scheduling Order). Thereafter, the Court will schedule an in-person Case Management Conference/Rule 16 Scheduling Conference ("CMC") to be held with Judge Stark and/or Judge Burke. The Checklist and Revised Patent Form Scheduling Order can be found on the Court's website ([www.ded.uscourts.gov](http://www.ded.uscourts.gov)).

A copy of the Checklist is available on the Court's website ([www.ded.uscourts.gov](http://www.ded.uscourts.gov)). I recognize that some of the questions on the Checklist may relate to case strategy. Nonetheless, I expect counsel to make good faith efforts to discuss, in person and/or by telephone, each of the topics listed.

A copy of the Revised Patent Form Scheduling Order is available on the Court's website ([www.ded.uscourts.gov](http://www.ded.uscourts.gov)).

The Case Management Conference ("CMC"), which also serves as the scheduling conference pursuant to Federal Rule of Civil Procedure 16, will be held in chambers or in the courtroom, on the record, with Judge Stark and/or Judge Burke. A court reporter will be present. At the CMC, each party must be represented by Lead Counsel and Delaware Counsel and be prepared to discuss each matter on the Checklist as well as any other matter that will be helpful or necessary to determining the most appropriate manner of managing the case. If there is a topic which a party thinks is inappropriate or premature to discuss, that party will have to explain its reasons for that view.

After the CMC, the Court may order the submission of a revised proposed scheduling order.

Where there are multiple related cases involving unrelated defendants, any party may request that the Court defer scheduling the CMC until a later date. Any party requesting such a deferral must accompany the request with a proposed order that, if entered, will require the parties to provide regular status reports advising the Court as to when they believe the case will be ready for a CMC and scheduling order. The greater the agreement among the parties to the related cases that deferral is appropriate, the more likely it is that deferral will be granted.

With rare exceptions, we will schedule trial upon entry of the scheduling order, setting a maximum number of trial days, double- and triple-tracking trials on my calendar as necessary.

If an early trial date is desired, the parties are reminded that if they unanimously consent to the jurisdiction of a Magistrate Judge, Judge Burke will almost always be able to proceed to trial more quickly than Judge Stark.

Where there are multiple related cases involving unrelated defendants, the Court will determine at some point (possibly as late as the pretrial conference) which defendant(s) will be tried first.

**Motions to Dismiss, Transfer, or Stay**

As noted in the Referral Order, any and all motions to dismiss, transfer, and/or stay will be referred to Judge Burke. Parties are reminded that they may consent to the jurisdiction of a Magistrate Judge for the limited purpose of final resolution of any motion, which has the effect of eliminating the right to file objections in the District Court, essentially giving the Magistrate Judge the same authority a District Judge would have with respect to that motion.

Generally, we will not defer the CMC and scheduling process solely due to the pendency of any of these motions.

### **Motions to Amend or Strike**

As noted in the Procedures Order, any and all motions to amend (or motions for leave to amend) and/or strike will not be accompanied by full briefing but will, instead, be channeled into the “discovery matters” procedures.

### **Narrowing the Case**

In order to manage my docket, and to ensure that litigation proceeds efficiently, I will be highly receptive to reasonable proposals to reduce, at an appropriate stage or stages of a case, the number of: patents-in-suit, asserted claims, accused products, invalidating references, combinations of invalidating references, invalidity defenses, and claim construction disputes.

### **Discovery**

I have modified my discovery matters procedures in several ways, most notably as follows:

- there is no longer a requirement that counsel call chambers to request a discovery teleconference. Instead, counsel are required to submit a joint, non-argumentative letter, representing that Delaware Counsel and Lead Counsel have *spoken* about the issues in dispute, listing the issues on which counsel believe judicial intervention is required, and requesting the scheduling of a discovery dispute teleconference (a form for the letter is included with the Procedures Order)
- there is no longer a requirement that the parties submit copies of sealed documents within an hour after filing their letters
- parties are required to submit two (2) courtesy copies of their discovery letters and attachments

Discovery teleconferences will continue to be limited to approximately 30-45 minutes each.

### **Default Standards/Exchange of Contentions**

Absent agreement among the parties or an order of the Court, the scheduling order will include dates for the exchange, in steps, of the following:

- Plaintiff shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiff shall also produce the file history for each asserted patent.
- Defendant shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s)

work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant shall also produce sales figures for the accused product(s).

- Plaintiff shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes.
- Defendant shall produce its initial invalidity contentions for each asserted claim, as well as the known related invalidating references.
- Plaintiff shall provide final infringement contentions.
- Defendant shall provide final invalidity contentions.

Also absent agreement among the parties or an order of the Court, the scheduling order will include a date by which all parties must finally supplement, *inter alia*, the identification of all accused products and of all invalidity references.

The foregoing are the same procedures contained in Judge Robinson's recently issued "Patent Case Scheduling Order" ("SLR Order") (see ¶ 1.c, 1.f, 1.g).

### **Markman**

I have set an aspirational goal of issuing all Markman rulings within 60 days after a Markman hearing. If I determine (due to, for example, an outsized number of claim disputes, deficiencies with the briefing, or scheduling congestion) that I will be unable to meet my goal, I will advise counsel of this fact.

Although I will continue to prefer having only a single Markman hearing in each case, and even just a single Markman hearing across all of any number of related cases, I do not plan to adhere rigidly to this preference. The parties should be prepared to discuss at the CMC whether a case or cases would be more efficiently handled by construing certain terms at an earlier point than other terms.

While I am not adopting Judge Robinson's requirement that "[f]or any contested claim limitation, each party must submit a proposed construction; i.e., 'plain and ordinary' meaning generally is not helpful to either the court or a jury" (SLR Order ¶ 5.b), I agree with her reasoning and am usually not persuaded that "plain and ordinary meaning" is an appropriate resolution of a material dispute over the scope of a claim term.



### **Summary Judgment/Daubert (Motions to Preclude/Exclude)**

I will continue to permit parties to file as many summary judgment and Daubert (i.e., motions to exclude or preclude anticipated expert testimony, in whole or in part) motions as they wish, subject to the restriction that each side is limited to no more than a total of fifty (50) pages of combined opening briefs in support of any and all such motions, no more than fifty (50) pages of combined answering briefs in opposition to the motions, and no more than twenty (20) pages of combined reply briefs in support of their motions.

The parties must work together to ensure that the Court receives no more than a *total* of **250 pages** (i.e., 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and Daubert motions that are covered by this scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule.

I will generally include in the scheduling order a date for argument on any motions for summary judgment and Daubert motions. Such a hearing will typically be held approximately two months prior to the pretrial conference. Generally, counsel should expect they will be given a total of no more than forty-five (45) minutes per side to present their arguments on all pending motions.

### **Pretrial Order**

I have revised my form pretrial order. (See "Proposed Final Pretrial Order – Patent" at [www.ded.uscourts.gov](http://www.ded.uscourts.gov).) I note some of the more important changes below.

I have clarified that when parties estimate the anticipated length of trial, they must do so not only in terms of trial days but also in terms of a specific request for a number of hours they need for their trial presentations. In formulating such a request, counsel should assume that they will be charged time for: opening statements, examination of witnesses (including by playing or reading deposition testimony), closing arguments, arguing objections (including in the mornings before trial begins), and arguing motions (including for judgment as a matter of law). I usually do not charge time for jury selection, opening and final jury instructions, and arguments regarding jury instructions. Counsel should also assume that in a typical trial day we can usually get in 5 ½ - 6 ½ hours in a jury trial and 6 - 7 hours in a bench trial.

Counsel need to indicate whether, in connection with efforts to impeach a witness with prior testimony, they wish to permit objections for incompleteness and/or lack of inconsistency.

Counsel need to indicate whether, in connection with objections to expert testimony as being beyond the scope of previous expert disclosures, they request that the Court rule on such objections at trial or defer ruling unless and until the objections are renewed in connection with post-trial motions (with costs of the new trial to be charged entirely to the party whose trial conduct necessitates a new trial).

With respect to motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50, counsel need to indicate whether they request such motions: (i) be made at sidebar while the jury remains in the courtroom, (ii) be made immediately at the appropriate point during trial, and (iii) be supplemented in writing (and, if so, when).

### **Pretrial Conference**

I expect to continue to conduct pretrial conferences largely as I have done to this point, although I will generally limit them to two (2) hours or less.

### **Jury Instructions, Voir Dire, Verdict Sheet**

Where a case is to be tried to a jury, the parties must provide the Court with courtesy copies of the required documents – proposed voir dire, preliminary jury instructions, final jury instructions, and special verdict forms – as computer files. These courtesy copies may be sent by e-mail to my staff. The files may be in either WordPerfect or Microsoft Word format.

### **Trial**

I expect to continue to conduct trials largely as I have done to this point.

After the jury returns a verdict, I will generally order the preparation of a joint status report, in which the parties should indicate, after meeting and conferring, how they believe the case should proceed, including whether (and when) additional briefing and/or in-court proceedings will be required.

The joint status report should identify the post-trial motions and issues on which any party intends to seek relief.

The joint status report should be accompanied by a proposed order to enter judgment on the verdict.

### **Post-Trial Motions**

Unless otherwise ordered, briefing is according to Local Rules, no matter how many motions are filed by a party. That is, each side may file a maximum total of twenty (20) pages of opening briefing, twenty (20) pages of answering briefing, and ten (10) pages of reply briefing, *regardless of how many motions are filed.*

Where possible, I will try to advise the parties as to my inclinations with respect to the issues that they plan to raise in their post-trial motions, so the parties may better assess whether I am likely to disturb the verdict of the jury.

**TAB-8**

**DEFAULT STANDARD FOR DISCOVERY,  
INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION  
("ESI")**

**1. General Provisions**

a. **Cooperation.** Parties are expected to reach agreements cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36. In the event that the parties are unable to agree on the parameters and/or timing of discovery, the following default standards shall apply until further order of the Court or the parties reach agreement.

b. **Proportionality.** Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information.<sup>1</sup> This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, time periods for discovery and other parameters to limit and guide preservation and discovery issues.

c. **Preservation of Discoverable Information.** A party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control.

(i) Absent a showing of good cause by the requesting party, the parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data; provided, however, that the parties shall preserve the non-duplicative discoverable information currently in their possession, custody or control.

---

<sup>1</sup>Information can originate in any form, including ESI and paper, and is not limited to information created or stored electronically.

(ii) Absent a showing of good cause by the requesting party, the categories of ESI identified in Schedule A attached hereto need not be preserved.

**d. Privilege.**

(i) The parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

(ii) With respect to information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

(iii) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

(iv) Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502. Until a non-waiver order is entered, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced or if notice is provided within 30 days of inadvertent production.

**2. Initial Discovery Conference.**

a. **Timing.** Consistent with the guidelines that follow, the parties shall discuss the parameters of their anticipated discovery at the initial discovery conference (the "Initial Discovery Conference") pursuant to Fed. R. Civ. P. 26(f), which shall take place before the Fed. R. Civ. P. 16 scheduling conference ("Rule 16 Conference").

b. **Content.** The parties shall discuss the following:

(i) The issues, claims and defenses asserted in the case that define the scope of discovery.

(ii) The likely sources of potentially relevant information (i.e., the “discoverable information”), including witnesses, custodians and other data sources (e.g., paper files, email, databases, servers, etc.).

(iii) Technical information, including the exchange of production formats.

(iv) The existence and handling of privileged information.

(v) The categories of ESI that should be preserved.

3. **Initial Disclosures.** Within 30 days after the Rule 16 Conference, each party shall disclose:

a. **Custodians.** The 10 custodians most likely to have discoverable information in their possession, custody or control, from the most likely to the least likely. The custodians shall be identified by name, title, role in the instant dispute, and the subject matter of the information.

b. **Non-custodial data sources.**<sup>2</sup> A list of the non-custodial data sources that are most likely to contain non-duplicative discoverable information for preservation and production consideration, from the most likely to the least likely.

c. **Notice.** The parties shall identify any issues relating to:

(i) Any ESI (by type, date, custodian, electronic system or other criteria)

---

<sup>2</sup>That is, a system or container that stores ESI, but over which an individual custodian does not organize, manage or maintain the ESI in the system or container (e.g., enterprise system or database).

that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i).

(ii) Third-party discovery under Fed. R. Civ. P. 45 and otherwise, including the timing and sequencing of such discovery.

(iii) Production of information subject to privacy protections, including information that may need to be produced from outside of the United States and subject to foreign laws.

Lack of proper notice of such issues may result in a party losing the ability to pursue or to protect such information.

#### **4. Initial Discovery in Patent Litigation.<sup>3</sup>**

a. Within 30 days after the Rule 16 Conference and for each defendant,<sup>4</sup> the plaintiff shall specifically identify the accused products<sup>5</sup> and the asserted patent(s) they allegedly infringe, and produce the file history for each asserted patent.

b. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff the core technical documents related to the accused product(s), including but not limited to operation manuals, product literature, schematics, and specifications.

c. Within 30 days after receipt of the above, plaintiff shall produce to each defendant an initial claim chart relating each accused product to the asserted claims each product allegedly infringes.

---

<sup>3</sup>As these disclosures are “initial,” each party shall be permitted to supplement.

<sup>4</sup>For ease of reference, “defendant” is used to identify the alleged infringer and “plaintiff” to identify the patentee.

<sup>5</sup>For ease of reference, the word “product” encompasses accused methods and systems as well.

d. Within 30 days after receipt of the above, each defendant shall produce to the plaintiff its initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals and patents).

e. Absent a showing of good cause, follow-up discovery shall be limited to a term of 6 years before the filing of the complaint, except that discovery related to asserted prior art or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited.

#### **5. Specific E-Discovery Issues.**

a. **On-site inspection of electronic media.** Such an inspection shall not be permitted absent a demonstration by the requesting party of specific need and good cause.

b. **Search methodology.** If the producing party elects to use search terms to locate potentially responsive ESI, it shall disclose the search terms to the requesting party. Absent a showing of good cause, a requesting party may request no more than 10 additional terms to be used in connection with the electronic search. Focused terms, rather than over-broad terms (e.g., product and company names), shall be employed. The producing party shall search (i) the non-custodial data sources identified in accordance with paragraph 3(b); and (ii) emails and other ESI maintained by the custodians identified in accordance with paragraph 3(a).

c. **Format.** ESI and non-ESI shall be produced to the requesting party as text searchable image files (e.g., PDF or TIFF). When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, i.e., the



original formatting, the metadata (as noted below) and, where applicable, the revision history. The parties shall produce their information in the following format: single page TIFF images and associated multi-page text files containing extracted text or OCR with Concordance and Opticon load files containing all requisite information including relevant metadata.

d. **Native files.** The only files that should be produced in native format are files not easily converted to image format, such as Excel and Access files.

e. **Metadata fields.** The parties are only obligated to provide the following metadata for all ESI produced, to the extent such metadata exists: Custodian, File Path, Email Subject, Conversation Index, From, To, CC, BCC, Date Sent, Time Sent, Date Received, Time Received, Filename, Author, Date Created, Date Modified, MD5 Hash, File Size, File Extension, Control Number Begin, Control Number End, Attachment Range, Attachment Begin, and Attachment End (or the equivalent thereof).

## SCHEDULE A

1. Deleted, slack, fragmented, or other data only accessible by forensics.
2. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
3. On-line access data such as temporary internet files, history, cache, cookies, and the like.
4. Data in metadata fields that are frequently updated automatically, such as last-opened dates.
5. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
6. Voice messages.
7. Instant messages that are not ordinarily printed or maintained in a server dedicated to instant messaging.
8. Electronic mail or pin-to-pin messages sent to or from mobile devices (e.g., iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.
9. Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.
10. Logs of calls made from mobile devices.
11. Server, system or network logs.
12. Electronic data temporarily stored by laboratory equipment or attached electronic

equipment, provided that such data is not ordinarily preserved as part of a laboratory report.

13. Data remaining from systems no longer in use that is unintelligible on the systems in use.

## **DEFAULT STANDARD FOR ACCESS TO SOURCE CODE**

Absent agreement among the parties, the following procedures shall apply to ensure secure access to source code:

1. A single electronic copy of source code or executable code shall be made available for inspection on a stand-alone computer.
2. The stand-alone computer shall be password protected and supplied by the source code provider.
3. The stand-alone computer shall be located with an independent escrow agent, with the costs of such to be shared by the parties. If the parties cannot agree on such an agent, each party shall submit to the court the name and qualifications of their proposed agents for the court to choose.
4. Access to the stand-alone computer shall be permitted, after notice to the provider and an opportunity to object, to two (2) outside counsel representing the requesting party and two (2) experts retained by the requesting party, all of whom have been approved under the protective order in place. No one from the provider shall have further access to the computer during the remainder of discovery.
5. Source code may not be printed or copied without the agreement of the producing party or further order of the court.
6. The source code provider shall provide a manifest of the contents of the stand-alone computer. This manifest, which will be supplied in both printed and electronic form, will list the name, location, and MD5 checksum of every source and executable file escrowed on the computer.
7. The stand-alone computer shall include software utilities

which will allow counsel and experts to view, search, and analyze the source code. At a minimum, these utilities must provide the ability to (a) view, search, and line-number any source file, (b) search for a given pattern of text through a number of files, (c) compare two files and display their differences, and (d) compute the MD5 checksum of a file.

8. If the court determines that the issue of missing files needs to be addressed, the source code provider will include on the stand-alone computer the build scripts, compilers, assemblers, and other utilities necessary to rebuild the application from source code, along with instructions for their use.