

THIS FORM IS TO BE RETYPED IN FULL (INCLUDING ALL INSTRUCTIONS) AND ALL MATERIAL INSERTED IN PROPER SEQUENCE AND NOT BY MEANS OF ATTACHED RIDERS EXCEPT AS PROVIDED BELOW. BEFORE SUBMITTING THIS DOCUMENT, THE PARTIES ARE TO CONSULT “JUDGE ESTHER SALAS’S GENERAL PRETRIAL AND TRIAL PROCEDURES.”

(PLEASE NUMBER ALL PAGES)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	:	
	:	Civil Action No.
Plaintiff,	:	
	:	Hon. Esther Salas, U.S.D.J.
-v-	:	Hon. Joseph Dickson, U.S.M.J.
	:	
	:	<u>PROPOSED</u>
	:	<u>FINAL PRETRIAL ORDER</u>
	:	
Defendant.	:	

This matter having come before the Court for a pretrial conference pursuant to Fed. R. Civ. P. 16; _____ having appeared for plaintiff(s) and _____ having appeared for defendant(s); and counsel all having been notified that:

(1) a [bench/jury] trial in this matter has been scheduled before the Hon. Esther Salas on [date];

(2) the pretrial submissions detailed in ¶¶ 2, 18 and 19 below are to be submitted no later than **forty-five (45) days prior to trial** (or as otherwise ordered by the Court) or they will be deemed waived; and

(3) a pretrial housekeeping conference is scheduled before Hon. Esther Salas on [date] _____;

the following Final Pretrial Order is hereby entered:

1. JURISDICTION—[The parties shall identify the basis for the Court’s jurisdiction.]
2. NATURE OF THE ACTION—[The parties shall provide a brief description of the nature and background of the action.]
3. *PATENT INFRINGEMENT SUITS ONLY*—THE PARTIES’ CONTENTIONS

[Plaintiff shall provide an identification and brief description of its contentions, including at least the following information:

- a. The specific patent claims to be asserted at trial;
- b. The specific products to be accused of infringement at trial;
- c. Whether the patentee intends to rely on the doctrine of equivalents to establish infringement for any claim;
- d. Whether the patentee intends to assert indirect infringement, and, if so, under what theory (i.e., contributory infringement and/or inducement) and as to which claims and products;
- e. The type of infringement damages to be sought (i.e., lost profits, reasonable royalty, or both); and
- f. If the accused infringer asserts that one or more of the asserted patent claims is obvious, whether the patentee intends to rely on any “secondary indicia” of non-obviousness to rebut this contention, and if so, which specific indicia.

Defendant shall provide an identification and brief description of its contentions, including at least the following information:

- a. Whether the accused infringer intends to assert that one or more of its products does not infringe one or more asserted claims; and
- b. Whether the accused infringer intends to assert that one or more of the asserted patent claims is invalid, and, if so, then:
 1. The specific patents, publications, devices, or other prior art to be asserted at trial as anticipating or rendering obvious one or more of the asserted claims;
 2. Whether the accused infringer will assert at trial that one or more asserted claims is invalid under 35 U.S.C. § 101; and

3. Whether the accused infringer will assert at trial that one or more asserted claims is invalid under 35 U.S.C. § 112 and, if so, the specific grounds to be asserted.]

4. PENDING/CONTEMPLATED MOTIONS/TRIAL BRIEFS—Set forth all pending or contemplated motions, whether dispositive or addressed to discovery or the calendar. Also set forth the nature of the motion and the return date. If the Court indicated that it would rule on any matter at pretrial, summarize that matter and each party’s position. **NOTE: ALL PRE-TRIAL MOTIONS INCLUDING *DAUBERT* AND *IN LIMINE* MOTIONS SHALL BE FULLY BRIEFED AND FILED NO LATER THAN FORTY-FIVE (45) DAYS PRIOR TO TRIAL or AS OTHERWISE ORDERED BY THE COURT.** Only those motions listed herein will be entertained prior to trial.

5. STIPULATION OF FACTS—[Set forth in numbered paragraphs all uncontested facts, including all answers to interrogatories and admissions, to which there is agreement among the parties.]

6. STIPULATIONS REGARDING TRIAL PROCEDURES—[The parties shall identify stipulations regarding trial procedures (e.g., exchange of demonstratives, disclosure of deposition designations and objections, etc.)]

7. JUDICIAL NOTICE

A. Plaintiff requests that the Court take judicial notice of the following facts:

B. Defendant objects to the taking of judicial notice for the following reasons:

8. JUDICIAL NOTICE

A. Defendant requests that the Court take judicial notice of the following facts:

B. Plaintiff objects to the taking of judicial notice for the following reasons:

9. PLAINTIFF’S CONTESTED FACTS—[Plaintiff must state contested facts separately for each Defendant. Proof shall be limited at trial to the contested facts set forth below. Failure to set forth any contested facts shall be deemed a waiver thereof.]

A. Plaintiff intends to prove the following contested facts with regard to liability:

B. Plaintiff intends to prove the following contested facts with regard to damages—[This must include each item of damages, the amount of each item, the factual basis for each item and, if punitive damages are claimed, the facts upon which plaintiff will rely to establish punitive damages.]

10. DEFENDANT’S CONTESTED FACTS—[Stated separately for each plaintiff. Proof shall be limited at trial to the contested facts set forth below. Failure to set forth any contested facts shall be deemed a waiver thereof.]

A. Defendant intends to prove the following contested facts with regard to liability:

B. Defendant intends to prove the following contested facts with regard to damages— [This statement must include the factual basis for each defense against plaintiff’s claims for damages.]

11. PLAINTIFF’S WITNESSES—[Aside from those called for impeachment purposes, only the witnesses whose names and addresses are listed below will be permitted to testify at trial. Indicate whether the witness is expected to testify live or by deposition.]

A. On liability, plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:

B. On damages, plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:

C. Defendant objects to the following witnesses for the reasons stated:

12. DEFENDANT’S WITNESSES—[Aside from those called for impeachment purposes, only the witnesses whose names and addresses are listed below will be permitted to testify at trial. Indicate whether the witness is expected to testify live or by deposition.]

A. On liability, defendant intends to call the following witnesses who will testify in accordance with the following summaries:

B. On damages, defendant intends to call the following witnesses who will testify in accordance with the following summaries:

C. Plaintiff objects to the following witnesses for the reasons stated:

13. EXPERT AND SPECIALIZED LAY OPINION WITNESSES—[No expert or specialized lay opinion witness offering scientific, technical, or other specialized knowledge will be permitted to testify at trial unless listed below. A summary of the expert’s qualifications and a copy of his/her report must be provided for the Court’s review at the pretrial conference. Said summary shall be read into the record at the time he/she takes the stand, and no opposing counsel shall be permitted to question his/her qualifications unless the basis of the objection is set forth herein.]

A. Plaintiff’s expert and specialized lay opinion witnesses are:

B. Defendant’s objections to the qualifications of plaintiff’s experts and specialized lay

opinion witnesses are:

C. Defendant's expert and specialized lay opinion witnesses are:

D. Plaintiff's objections to the qualifications of defendant's experts and specialized lay opinion witnesses are:

14. PLAINTIFF'S DEPOSITIONS—[List, by page and line, all deposition testimony to be offered into evidence. All irrelevant and redundant matters and all colloquy among counsel must be eliminated, unless ruled relevant. Deposition testimony to be used solely for impeachment purposes need not be listed.]

A. On liability, plaintiff intends to read into evidence the following:

B. On damages, plaintiff intends to read into evidence the following:

C. Defendant objects to the deposition testimony set forth above for the reasons stated:

15. DEFENDANT'S DEPOSITIONS—[List, by page and line, all deposition testimony to be offered into evidence. All irrelevant and redundant matters and all colloquy among counsel must be eliminated, unless ruled relevant. Deposition testimony to be used solely for impeachment purposes need not be listed.]

A. On liability, defendant intends to read into evidence the following:

B. On damages, defendant intends to read into evidence the following:

C. Plaintiff objects to the deposition testimony set forth above for the reasons stated:

16. PLAINTIFF'S EXHIBITS—[Except for exhibits the need for which could not reasonably have been foreseen or which are used solely for impeachment purposes, only the exhibits set forth on the exhibit list attached hereto may be introduced at trial. Any objection to an exhibit, and the reason for said objection, must be set forth below or it shall be deemed waived. All parties hereby agree that it will not be necessary to bring in the custodian of any exhibit as to which no such objection is made.]

A. Plaintiff intends to introduce into evidence the exhibits listed on the attached exhibit list (list by number with a description of each exhibit):

B. Defendant objects to the introduction of plaintiff's exhibits (set forth number of exhibit and grounds for objection):

17. DEFENDANT'S EXHIBITS—[Except for exhibits the need for which could not reasonably have been foreseen or which are used solely for impeachment purposes, only the exhibits set forth on the exhibit list attached hereto may be introduced at trial. Any objection to an exhibit,

and the reason for said objection, must be set forth below or it shall be deemed waived. All parties hereby agree that it will not be necessary to bring in the custodian of any exhibit as to which no such objection is made.]

A. Defendant intends to introduce into evidence the exhibits listed on the attached exhibit list (list by number with a description of each exhibit):

B. Plaintiff objects to the introduction of defendant's exhibits (set forth number of exhibit and grounds for objection):

[COPIES OF EXHIBITS ARE TO BE MADE FOR OPPOSING COUNSEL, AND (3) THREE BENCH BOOKS OF EXHIBITS ARE TO BE DELIVERED TO THE JUDGE IN ACCORDANCE WITH "JUDGE ESTHER SALAS'S GENERAL PRETRIAL AND TRIAL PROCEDURES."]

18. PLAINTIFF'S LEGAL ISSUES—[Any issue not listed shall be deemed waived.]

19. DEFENDANT'S LEGAL ISSUES—[Any issue not listed shall be deemed waived.]

20. MISCELLANEOUS—[The parties must indicate any other matters that require action by, or should be brought to the attention of, the Court.]

21. JURY TRIALS—[Litigants should send to Chambers two (2) courtesy copies of the following materials. Submissions should be tabbed and spiral bound (not Velo-bound). The materials should also be sent to the Court on a disc in Microsoft Word format. These materials are due no later than forty-five (45) days prior to trial (or as otherwise ordered by the Court). For clarification on the below, the parties are required to consult Part II.I.1-4 of "Judge Esther Salas's General Pretrial and Trial Procedures."]

A. Each side shall submit to the Court and to opposing counsel a trial brief or memorandum in accordance with Local Civil Rule 7.2, with citations to authorities and arguments in support of its position on all disputed issues of law.

B. The parties are required to confer and submit a combined draft of the proposed jury instructions, including columns indicating disagreements.

C. Any hypothetical questions to be put to an expert witness on direct examination shall be submitted to the Court and to opposing counsel.

D. Counsel shall jointly submit to the Court a single set of proposed *voir dire* questions as to which the parties are in agreement, not to exceed 30 questions. Parties must also identify any disputed questions in column format.

E. Counsel shall jointly submit to the Court a single proposed special verdict sheet.

F. The parties shall prepare a joint trial exhibit list containing a description of all exhibits. The list shall be divided into three columns: the first column will identify the exhibit; the second column will state the opponent's objection and contain a short statement citing the relevant rule and/or concept that supports the objection; the third column will contain the proponent's rationale for admissibility. The exhibits themselves are to be pre-marked and must include exhibit stickers. Additionally, the parties must prepare three copies of the bench book containing the exhibits that they expect to use.

G. The parties shall identify any equitable, legal, or other issues that they contend should be decided by the Court, through a bench trial or otherwise.

22. NON-JURY TRIALS—[The following materials should be submitted to the Court in the same manner as materials for jury trials, listed above. The materials must be submitted no later than forty-five (45) days prior to trial or as otherwise ordered by the Court]:

A. Each side shall submit to the Court and opposing counsel a trial brief or memorandum in accordance with Local Civil Rule 7.2 with citation to authorities and arguments in support of its position on all disputed issues of law.

B. Following a non-jury trial, proposed findings of fact and conclusions of law must be submitted to the Court within one week of the close of trial (or as otherwise ordered by the Court). Submitting litigants must include specific reference to testimonial or documentary evidence in support of the proposals.

C. If any hypothetical questions are to be put to an expert witness on direct examination, they shall be submitted to the Court and opposing counsel.

23. TRIAL COUNSEL—[Each party shall identify the names, law firms, addresses, telephone numbers, and email addresses for the attorneys who will try the case on behalf of that party.]

24. BIFURCATION—[If any party intends to request phasing, bifurcation, or other procedure concerning the trial length or ordering of evidence, that party shall include any such request herein and explain the basis for the request.]

25. ESTIMATED LENGTH OF TRIAL—[Each party shall specify the number of hours that it contends is appropriate for each party for each of the following: (a) *voir dire*; (b) opening statements; (c) presentation of evidence for liability; (d) presentation of evidence for damages; (e) closing arguments.]

AMENDMENTS TO THIS PRETRIAL ORDER WILL NOT BE PERMITTED UNLESS THE COURT DETERMINES THAT MANIFEST INJUSTICE WOULD RESULT WERE THE AMENDMENT DISALLOWED. THE COURT MAY FROM TIME TO TIME SCHEDULE CONFERENCES AS MAY BE REQUIRED EITHER ON ITS OWN MOTION OR AT THE REQUEST OF COUNSEL.

(Attorney for Plaintiff)

(Attorney for Defendant)

Dated:

United States Magistrate Judge

(EXHIBIT LIST FOLLOWS)