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3
4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 [Plaintiff],

Case No. [Case #]

7
8 v.

Plaintiff,

ORDER SETTING FORTH COURT
PROCEDURES

9 [Defendant],

10
11 Defendant.

12 **PROCEDURES FOR ALL CIVIL CASES**

13 The following procedures are to be followed in civil cases assigned to this
14 Court. These practice standards supplement the Federal Rules of Civil Procedure and
15 Local Rules (LCR) of the United States District Court for the Western District of
16 Washington.

17 Counsel and parties will be expected to follow LCR 1, and uphold the “duty to be
18 respectful of others.” The Court anticipates that every person involved in litigation will be
19 responsible “to avoid comment or behavior that can reasonably be interpreted as manifesting
20 prejudice or bias toward another on the basis of categories such as gender, race, ethnicity,
21 religion, disability, age, or sexual orientation.”

22 In the event there is an inconsistency between the Local Rules and these
23 practice standards, the terms of this Order control. The terms of this Order shall apply to
24 all pleadings and hearings pertaining to cases assigned to Judge Theresa L. Fricke and
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1 shall have the force and effect of orders of the Court from this date forward. If the case
2 was previously assigned to a different Judge, these practice standards replace those that
3 previously controlled, but only as to pleadings and hearings from this date forward.

4 **I. Communications with Chambers**

5 Except as provided for in this Order, parties and counsel should avoid contacting
6 chambers. *Ex parte* communications with Judge Fricke or judicial law clerks involving
7 any matter other than scheduling or notice of settlement are strongly discouraged. In
8 relation to scheduling and/or settlement, unless the other parties have consented to have
9 one party contact the Court alone, all parties must be on the line when communicating
10 with the Court.

11 **II. Motions**

12 **A. Structure, Page Limitations, and Typeface**

13 A motion and the legal argument supporting the motion shall be filed as a single
14 document. Pleadings shall not contain a table of cases or a table of authority. Except for
15 Motions for Summary Judgment, all other motions, oppositions, and objections shall not
16 exceed FIFTEEN (15) pages (exclusive of the certificate of service). Replies shall not
17 exceed SEVEN (7) pages, unless otherwise noted. Leave of Court must be obtained to
18 file a surreply. If leave is obtained, surreplies shall not exceed FIVE (5) pages.

19 Motions to exceed the page limitations will be granted only where the matter is
20 one of extraordinary complexity.

21 Motions, oppositions, objections, replies, and surreplies shall be double-spaced
22 and filed in no less than 12-point sans serif font in the text and 10-point sans serif font in
23 the footnotes. The pleadings shall contain page numbers and have margins of no less
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1 than 1 inch. Pleadings which do not comply with these instructions will be summarily
2 denied or stricken.

3 **B. Courtesy Copies**

4 The Court **DOES NOT ACCEPT** courtesy copies of pleadings. Hard copies of
5 trial exhibits, jury instructions, and other trial-related materials, or exhibits or
6 demonstrations for claim construction and other hearings in patent cases, are an
7 exception to this policy.

8 **C. Certification of Meet and Confer**

9 Except for dispositive motions, motions shall contain a certification that the parties
10 have met and conferred. (*But see* below -- for the specific meet and confer requirements
11 that apply to motions to dismiss pursuant to Fed. R. Civ. P. 12(b)). The certification should
12 be clearly visible within either the first substantive paragraph or the final paragraph of the
13 motion. Parties must meaningfully confer prior to filing a motion. For example, waiting
14 until the expiration of a deadline and contacting the opposing party, receiving no
15 immediate response, and then filing the motion does not satisfy that duty. Parties should
16 provide for at least three (3) business days between attempts to confer and a motion's
17 filing and shall explain their specific efforts to comply if contact was not successfully made.
18 Motions that do not comply may be summarily denied.

19 **D. Requests for Extensions of Time**

20 Motions for extensions of time will be granted only where the facts that support the
21 moving party's allegations of good cause are set forth and the circumstances are clearly
22 described. Parties should not expect the Court to grant extensions even if they are
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1 unopposed, unless the motion is properly supported by a good cause showing. Press of
2 business in other matters ordinarily does not evidence good cause.

3 Motions for extensions of time shall be filed at least three (3) business days in
4 advance of the expiration of the relevant deadline. Any opposition must be filed within two
5 (2) business days of the motion. Untimely motions or responsive pleadings may be
6 summarily denied, stricken, or ignored.

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8 **E. Requests to Reschedule Hearings**

9 Motions to reschedule are discouraged. If rescheduling is necessary, the motion
10 shall be filed no later than **FIVE (5) business days** before the scheduled hearing. The
11 motion shall contain alternative dates and times which are available for **all** parties. If the
12 suggested dates and times are not available on the Court's calendar, the Court will select
13 a date and time *sua sponte*.

14 **F. Dispositive Motions**

15 A motion pursuant to Fed. R. Civ. P. 12(b) is discouraged if the defect can be cured
16 by filing an amended pleading. **Therefore, the parties must meet and confer prior to**
17 **filing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) in order to determine**
18 **whether it can be avoided.** Consequently, such motions must contain a certification of
19 meet and confer as set forth above in Section II (C). Timely motions to amend normally
20 should be agreed upon in advance of filing.

21 A motion under Fed. R. Civ. P. 56, and oppositions thereto, shall not exceed
22 **THIRTY (30) pages** (exclusive of the certificate of service). Replies shall not exceed
23 **TWENTY (20) pages**. If leave to file a sur-reply is given, it shall not exceed **TEN (10)**

1 **pages.** A motion for summary judgment may be filed *at any time prior to expiration of the*
2 *dispositive motions deadline.*

3 **G. Motions in Limine**

4 The parties shall endeavor to resolve any evidentiary disputes prior to filing a
5 Motion in Limine. Motions in Limine should normally be filed as one motion; oppositions
6 thereto shall not exceed **FIFTEEN (15) pages** (exclusive of the certificate of service). Any
7 opposition to a Motion in Limine shall be filed no later than **FOURTEEN (14) days** after a
8 motion is filed. The moving party will not file any reply brief in support of a motion in limine
9 unless ordered otherwise by the Court.

10 **H. Motions for Reconsideration**

11 Motions for reconsideration are discouraged. Motions that reassert prior
12 arguments or raise new arguments that could have been made earlier will be summarily
13 denied. Motions for reconsideration and oppositions thereto shall not exceed **TEN (10)**
14 **pages** (excluding the certificate of service). Replies shall not exceed **FIVE (5) pages**.

15 **I. Hearings on Motions**

16 A party may request oral argument, and the Court retains discretion to nonetheless
17 resolve the motion on the briefs. If the Court finds that oral argument is necessary, the
18 parties shall be limited to **FIFTEEN (15) minutes** per side unless otherwise ordered.

19 **III. Discovery Disputes**

20 **The parties are directed to not file opposed discovery motions until the**
21 **parties meaningfully comply with Fed. R. Civ. P. 37(a)(1).** If the parties are unable to
22 reach an agreement on a discovery issue after conferring, they shall arrange a telephone
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1 hearing with the Court regarding the issue. Both of these steps must be completed before
2 any opposed discovery motions are filed. Noncompliant motions may be summarily
3 denied or stricken.

4 To arrange a telephone hearing, all counsel (not support staff) for the disputing
5 parties shall send a joint email to Payal_Patel@wawd.uscourts.gov with a short
6 (maximum one paragraph) joint description of the dispute, as well as three dates and time
7 ranges when the parties are available for a teleconference. The parties' time ranges
8 should specify Eastern Standard Time or Pacific Standard Time. Counsel shall not
9 contact the Court until they have sufficiently narrowed the disputed issues to only those
10 issues they cannot, without Court assistance, resolve themselves. Because the Court
11 expects that the parties should contact it only as a last resort, counsel found to be
12 unreasonably delaying discovery may be sanctioned.

13 Discovery disputes shall be raised in a timely manner so as to allow discovery to
14 be completed within the discovery deadline. The failure to do so may waive a party's
15 ability to challenge the discovery behavior.

16 In the event that the Court permits the filing of an opposed discovery motion, the
17 motion shall contain a verbatim recitation of the discovery request and objection (if any)
18 at issue or shall attach a copy of such. Again, if the Court must resolve the discovery
19 dispute by motion, the losing party may be sanctioned. Attached is a worksheet the parties
20 shall prepare and file along with any contested discovery motion, showing the history of
21 the discovery disputes in the case, and describing the current dispute in sufficient detail
22 to allow the Court to have a full understanding of context.

[CASE NAME & NUMBER]

To assist the Court in more efficiently addressing the parties' discovery dispute(s), the parties shall meet and confer, and jointly complete the following chart. The purpose of this chart is to succinctly state each party's position. The fully completed chart shall be filed by the moving party as an exhibit to the motion.

The moving party is: _____

The responding party is: _____

Note: The moving party shall identify the element(s) of the cause of action or defense that the disputed discovery relates to, and shall identify the pattern jury instruction, if any, or caselaw that supports their description of the element(s). If discovery from both parties is at issue, provide a separate sheet for each moving party.

Discovery Request at Issue	Relevant to prove...	Moving Party's Position	Responding Party's Position

Counsel for [Plaintiff]: _____

Counsel for [Defendant]: _____

Notice of these discovery procedures shall be provided to third parties who receive discovery requests from the parties. They, too, shall be expected to comply with these procedures.

1 **IV. Settlement**

2 The parties shall evaluate the opportunity for settlement at the outset of the case .
3 To that end, the parties shall contact chambers to request mediation (with a Magistrate
4 Judge, private mediator, or the Court’s mediation program), arbitration, or any other form
5 of alternate dispute resolution where they are in agreement that such would be helpful.
6 Although the Court expects the parties to address settlement at the outset of the case,
7 the parties have an ongoing obligation to explore possible settlement options, and the
8 Court’s scheduling order will have a settlement negotiations deadline. This does not mean
9 all settlement efforts must cease on that date, but it does indicate the Court’s expectation
10 that the parties will have explored settlement and, if the parties agree to negotiate, they
11 will have engaged in good faith settlement negotiations on or before that date. If the matter
12 settles, in whole or in part, the parties shall promptly file a Notice of Settlement and advise
13 the Court how much time is needed to file dismissal papers.

14 **V. Pretrial Conference**

15 **TWENTY-EIGHT (28) days** prior to the Trial Date, the parties shall submit a Joint
16 Pretrial Statement that addresses the matters set forth below (in the order they are listed):

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- 18 a. a short, concise statement of the case;
 - 19 b. any facts to which the parties can stipulate;
 - 20 c. designation of depositions and objections thereto;
 - 21 d. itemization of damages and a summary of other relief requested;
 - 22 e. a summary of any pending Motions *in Limine* and the opposition thereto;
 - 23 f. a statement concerning whether settlement negotiations have been
24 or would be beneficial;
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- 1 g. an updated estimate of the length of trial;
- 2 h. a schedule of witnesses and a brief summary of their expected
3 testimony and any objections thereto (attached as separate
4 documents);
- 5 i. a list of exhibits and any objections thereto (attached as separate
6 documents);
- 7 j. proposed jury instructions (*see also* Section VIII, D at Jury
8 Instructions);
- 9 k. proposed verdict forms; and
- 10 l. proposed questions for *voir dire*.

11 While the parties are admonished to reach an agreement on all issues, items of
12 disagreement may be called to the Court's attention in the statement. The parties shall,
13 in concise form, note any relevant case law supporting their positions. In no event shall
14 the parties file separate statements. Where possible, the Court will resolve areas of
15 disagreement at the Pretrial Conference. Otherwise, the Court will direct the parties to
16 submit further briefing. In addition to filing the Joint Pretrial Statement on the docket, the
17 parties shall deliver a hard copy to chambers in a binder that has an index with items a -
18 l above on labeled dividers.

19 **VI. Courtroom Procedures**

20 Counsel with authority to make scheduling decisions shall appear on behalf of the
21 parties at all Court appearances. Counsel and *pro se* parties shall observe traditional
22 courtroom decorum, including that they shall rise to address the Court and remain at the
23 podium unless granted permission to approach the bench or a witness. When not
24 addressing a witness, counsel and *pro se* parties shall direct all statements to the Court.
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1 **VII. Trial Procedures**

2 **A. General**

3 Schedule: Unless otherwise notified, trials are normally set to begin at 9:30 a.m.

4 On each day of trial, counsel are expected to be present thirty minutes prior to the start
5 to discuss any upcoming issues. To ensure that the morning pretrial hearing is productive
6 and efficient, counsel shall meet after the conclusion of each trial day and attempt to
7 resolve or refine upcoming disputes. The normal trial day goes from 9:30 a.m. to noon
8 and 1:30 p.m. to 4:30 p.m., with morning and afternoon breaks fifteen minutes in duration
9 at the Court's discretion.

10 Recording of Proceedings: The official record of all trials and proceedings will be
11 taken by either electronic sound recording or by a realtime reporter.

12 Glossary: Where necessary, counsel shall confer and prepare a joint glossary of
13 any unusual or technical terminology. The glossary shall be submitted to chambers no
14 later than **FIVE (5) business days** in advance of the start of trial. Copies shall also be
15 provided to the courtroom deputy and Court reporter (if any) on the first day of trial.

16 Trial Briefs: No trial briefs are allowed unless specifically ordered by the Court.

17 **B. Exhibits**

18 On the first day of trial, counsel for each party shall provide the courtroom deputy:
19 (1) an original set of marked exhibits in a notebook for the use of witnesses during trial;
20 (2) two duplicate sets of marked and bound exhibits for the Court's use during trial; and
21 (3) an original and three copies of each party's respective witness and exhibits lists.

22 The Court will rule on the admissibility of exhibits at the Final Pretrial Conference.
23 Once ruled on, counsel may refer to them in argument or during the examination of
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1 witnesses and need not lay a foundation for their admissibility or move their admission
2 during the trial. Impeachment or rebuttal exhibits (those whose sole purpose is to attack
3 a witness' veracity) need not be disclosed at the Final Pretrial Conference, but they should
4 be pre-marked, when possible, so that they will be immediately useable at trial without
5 the necessity for labeling by the courtroom deputy.

6 Exhibits shall be marked by number (P1, P2, P3, etc., D1, D2, D3, etc., or, for Joint
7 Exhibits, J1, J2, J3, etc.) and groups of exhibits shall be marked by number and letter
8 (P1A, P1B, P1C, D1A, D1B, D1C, J1A, J1B, J1C, etc.).

9 **C. Statements and Witnesses**

10 Opening Statements: Except for especially complex cases, or otherwise
11 authorized by the Court, opening statements shall be limited to no more than **THIRTY**
12 **(30) minutes per side.**

13 Witnesses: The rule on exclusion of witnesses will be in effect throughout the trial
14 until the time of closing arguments and instructions. Other than parties and their
15 representatives, all witnesses must remain out of the courtroom except while testifying.
16 After completion of testimony, a witness may remain in the courtroom but cannot then be
17 recalled. If counsel desire a waiver of the rule with respect to a specific witness (for
18 example, an expert), counsel shall first discuss the matter with opposing counsel and then
19 present the request to the Court during the preliminary morning session prior to the start
20 of trial on the particular day at issue. Counsel shall instruct witnesses not to discuss their
21 testimony with other witnesses, either during or after they complete their testimony.

22 Once the trial begins, witnesses will be put on call at the peril of the calling party.
23 The trial will not be recessed because a witness is unavailable except in extraordinary
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1 circumstances. If alerted ahead of time, the Court will endeavor to accommodate
2 witnesses with scheduling problems.

3 The use of an exhibit notebook should obviate the need to approach the witness.
4 If extraordinary circumstances exist, counsel may approach the courtroom deputy who,
5 in turn, will approach the witness. Otherwise, counsel are required to remain at the
6 podium. Where counsel seeks to impeach a witness by use of that witness' prior
7 deposition or other discovery materials, copies of the relevant document must be provided
8 to the witness, the Court, and opposing counsel.

9 Examinations: Counsel are advised to avoid eliciting witnesses' personal identifiers
10 such as social security numbers, financial account information, names of minor children,
11 dates of birth and home addresses. If such information inadvertently becomes part of the
12 record, counsel may request redaction of such items.

13 Experts: A proper resume or curriculum vitae, marked as an exhibit, shall be
14 provided in the exhibit notebooks.

15 Jury Trials: Questions intended to qualify the witness as an expert shall
16 be brief.

17 Trials to the Court: A proper resume or curriculum vitae generally will
18 suffice for the determination of an expert witness'
19 qualification without additional questioning.

20 Depositions: All original deposition transcripts should be delivered to the courtroom
21 deputy before the start of trial.

22 Deposition Testimony: The intent to utilize deposition testimony should be included
23 in the proposed Joint Pretrial Order after counsel have conferred and narrowed any
24 objections. If differences remain, counsel for the offering party shall provide to the Court
25 two (2) copies of the designated transcript **FIVE (5) business days** prior to the Final

1 Pretrial Conference, each with plaintiff's designations highlighted in yellow and
2 defendant's designations highlighted in blue and objections noted.

3 Jury Trials: Counsel offering the deposition testimony is required to
4 provide a person to read the designated portions of the
transcript.

5 Trials to the Court: Deposition transcripts will not be read at trial.

6 Videotaped Depositions: The intent to utilize videotaped deposition testimony
7 should be included in the proposed Joint Pretrial Order after counsel have conferred and
8 narrowed any objections. If differences remain, the dispute(s) should be summarized in
9 the Joint Pretrial Order and the matter will be addressed at the Final Pretrial Conference.

10 Objections: The Court does not allow "speaking objections" in the presence of the
11 jury.. Counsel must stand when raising objections and limit the objections to shorthand
12 phrases such as "hearsay," "lack of foundation," "asked and answered," etc. If additional
13 discussion is needed, counsel must request to approach the bench. But, frequent or
14 protracted bench conferences are discouraged.

15 Counsel requesting that an immediate jury instruction be given to the jury must
16 provide the Court with the proposed text of the jury instruction.

17 Closing Arguments: Closing arguments generally will be limited to no more than
18 **FORTY-FIVE (45) minutes** per side. Requests for longer presentations must be
19 submitted to the Court before closing arguments begin. Plaintiff may reserve for rebuttal
20 up to one-half of the time actually used during the direct argument. Counsel are reminded
21 that it is improper to argue matters not in evidence or to express personal opinions or
22 beliefs about the case.

1 **D. Jury Trials**

2 Proposed joint *voir dire*, proposed joint jury instructions, and verdict forms shall be
3 filed **TWENTY-EIGHT (28) days** prior to the Trial Date as part of the Joint Pretrial
4 Statement.

5 In civil trials, the jury shall consist of nine jurors. Each side shall have three
6 peremptory challenges.

7 Voir Dire: The Court will conduct *voir dire* and will consider proposed joint *voir dire*
8 questions submitted in advance by counsel. Counsel may also submit additional
9 individually directed written questions during the *voir dire* that the Court will ask the
10 individual jurors. Counsel for each party may have **TEN (10) minutes** each to further
11 question the prospective jurors. Counsel shall not ask questions submitted to and rejected
12 by the Court.

13 Preliminary Instructions: After the jury is selected and sworn, the Court will give
14 preliminary instructions to the jury. These instructions will generally include a description
15 of the trial process, the responsibilities of the participants, the burden of proof, the daily
16 trial schedule, procedures governing juror note taking and the duty not to discuss the case
17 with anyone until deliberations begin. If counsel for any party desires that any additional
18 preliminary instructions be given, they shall include a request in the proposed joint jury
19 instructions.

20 Note Taking by Jurors: Generally, jurors will be permitted to take notes in
21 notebooks which the Court will provide. The jurors will be given a preliminary instruction
22 about note taking. During recesses, jurors will be required to leave their notebooks in the
23 courtroom. At the end of each day, the notebooks will be collected by the courtroom
24 deputy, and will be placed back on the jurors' seats at the commencement of the trial on
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1 the following day. At the end of the trial, the jurors will be permitted to take their notebooks
2 to the jury room for use during deliberations. At the end of deliberations, any notes taken
3 by jurors will be destroyed.

4 Jury Instructions: **To the maximum extent possible, counsel for the parties**
5 **shall agree on one stipulated set of proposed jury instructions; only uncertainty in**
6 **the binding substantive law should prevent such agreement.** Each instruction should
7 begin on a new page. Where disagreements arise, the proposed jury instructions shall
8 include the alternate instructions and argument and authority for the instruction not to
9 exceed TWO (2) pages for each party and instruction.

10 Final Jury Instructions: Prior to the closing arguments, the Court will advise
11 counsel of the Court's determinations concerning instructions to be given to the jury.
12 Where warranted, the Court will conduct a jury instruction conference to allow counsel to
13 lodge argument related to disputed jury instructions.

14 The jury will be instructed prior to closing arguments. A written copy of the
15 instructions will be given to each juror when the jury commences its deliberations.

16 Deliberations: The jury will be given all admitted exhibits, the written jury
17 instructions, and any verdict form and special interrogatories that the Court has decided
18 to use. Throughout jury deliberations counsel must be within twenty minutes of the
19 courthouse for the Court to expeditiously respond to any jury notes or a verdict. Counsel
20 who choose not to remain in the immediate vicinity of the courtroom must provide the
21 courtroom deputy or law clerk with a telephone number where they can be contacted.
22 Unless counsel object, the jury will not be brought into the courtroom to be excused at the
23 end of the day, nor for resumption of deliberations when it returns the following day.

1 Instead, the courtroom deputy or law clerk will excuse the jury from the jury room at the
2 end of the day and collect all exhibits, notebooks, and verdict forms. These items will be
3 returned to the jury room when the jury returns the next morning to continue its
4 deliberations. The jury will be reminded that they are not permitted to discuss the case
5 with anyone.

6 **E. Trials to the Court**

7 Proposed findings of fact and conclusions of law shall not be filed in advance of
8 trial. Where necessary, the Court will order that such documents be filed at the conclusion
9 of trial.

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11 **VIII. Compliance**

12 A failure by any party to fully comply with this order may result in the imposition of
13 sanctions.

14 **SO ORDERED.**

15 Dated this ___ day of _____, 202_.

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18 _____
19 Theresa L. Fricke
20 United States Magistrate Judge
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