

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION

3:15-MD-2614	§	
In re: INDUSTRIAL PRINT TECHNOLOGIES, LLC, Patent Litigation, Plaintiff,	§ § §	
vs.	§	
CENVEO, INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-0165-M
O'NEIL DATA SYSTEMS, INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-1100-M
O'NEIL DATA SYSTEMS, INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-1101-M
QUAD/GRAPHICS, INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-1103-M
O'NEIL DATA SYSTEMS, INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-1104-M
VISTAPRINT U.S.A., INC., and HEWLETT-PACKARD COMPANY	§ §	Case No.: 3:15-CV-1106-M
FORT DEARBORN COMPANY, and HEWLETT-PACKARD COMPANY,	§ §	Case No.: 3:15-CV-1195-M
Defendants.	§	

PRELIMINARY PATENT SCHEDULING ORDER

Pursuant to Fed. R. Civ. P. 16(b) and 26, the local civil rules of this Court (except as modified herein), the Court’s Civil Justice Expense and Delay Reduction Plan, and in consideration of any appropriate proposal submitted by the parties, the Court enters this Preliminary Patent Scheduling Order. *Miscellaneous Order No. 62* is in effect except as set out in this Order. Unless otherwise ordered or specified herein, all limitations and requirements of the Federal Rules of Civil Procedure, as amended, must be observed.

1. **Joinder of Parties:** By **October 27, 2015**, all motions requesting **joinder** of additional parties shall be filed.

2. **Amendment of Pleadings:** By **December 17, 2015**, amendments of pleadings shall be filed. Motions for leave to amend need not be filed so long as the amendment is filed within the deadline set in this paragraph. The amending party shall attach as an exhibit to the Amended Complaint a redlined version of the Complaint.
3. **Dispositive Motions:** All motions that would dispose of all or any part of this case, including motions for **summary judgment**, shall be filed by **285 days after the Court's *Markman* ruling**. Cross-motions for summary judgment shall not, except in truly extraordinary circumstances, be permitted to be filed after the dispositive motion deadline. If the parties seek to extend the dispositive motion deadline closer to the trial date than 120 days, such an extension may mean that the Court may not be able to decide such motions before trial. Delay in deciding motions will not affect the trial date. Briefs in support of responses to summary judgment motions shall be subject to the page restrictions contained in Local Rule 56.5(b). The inclusion of a dispositive motion deadline does not mean that the parties can file more than one motion for summary judgment. If a motion for summary judgment is filed by a party, that party will have to seek leave to file any additional motion(s) for summary judgment.
4. **Initial Designation of Experts:** Unless otherwise stipulated or directed by Order, any party with the burden of proof on an issue shall file a written designation of the name and address of each **expert witness** who will testify at trial on such issue(s) and otherwise comply with Rule w 26(a)(2), Fed. R. Civ. P. (“Rule 26(a)(2)”), **180 days after the Court's *Markman* ruling**.
5. **Responsive Designation of Experts:** Any party without the burden of proof on an issue but who wishes to utilize an expert witness shall file a written designation of the name and

address of each **expert witness** who will testify at trial for that party on such issue(s) and shall otherwise comply with Rule 26(a)(2) on or before **225 days after the Court's *Markman* ruling.**

6. **Objections to Experts:** Objections to the qualifications or competency of experts, sometimes referred to as Daubert motions, must be made in a written motion filed no later than **285 days after the Court's *Markman* ruling.**
7. **Handling and Protection of Privileged or Trial-Preparation Material:** The parties shall submit, within thirty (30) days of the date of this Order, the Confidential Information Protective Order which is Appendix A to Miscellaneous Order No. 62, for protection of proprietary information that will also delineate the handling of attorney-client and attorney-work product information. If the parties desire to provide a technology tutorial, they shall exchange proposed written or visual tutorial presentations prior to submission of the Court. If the parties agree on a final tutorial presentation, it shall be submitted to the Court at the Court's request. If the parties cannot agree on a joint tutorial presentation, each side shall submit their respective presentations to the Court and serve on all parties at least seven days prior to the date set by the Court for submission to the Court.
8. The parties shall adhere to the following schedule:

Local Rule	Description	Deadline
4-1(a)	Exchange terms	July 16, 2015 [Expired.]
4-2(a)	Exchange constructions	July 30, 2015
4-3	Submit Joint Claim Construction and Prehearing Statement to Court	August 31, 2015
4-4	Deadline to complete claim construction discovery	September 30, 2015

4-5(a)	Opening Claim Construction briefs Deadline to submit technology tutorials, if parties agree to use such tutorials	October 15, 2015
4-5(b)	Responsive Claim Construction briefs	October 29, 2015
4-5(c)	Joint Claim Construction Chart	November 2, 2015
4-6	Markman Hearing	Saturday, November 14, 2015, at 9:00 a.m.
	Case Management Conference	Court to set conference within 30 days after <i>Markman</i> ruling, if needed
	Close of fact discovery; mediation deadline	120 days after <i>Markman</i> ruling
	Opening expert reports for party with burden of proof	180 days after <i>Markman</i> ruling
	Rebuttal expert reports	225 days after <i>Markman</i> ruling
	Close of expert discovery	255 days after <i>Markman</i> ruling
	Summary Judgment and Daubert motion deadline (regular response time periods apply per NDTX Local Rules)	285 days after <i>Markman</i> ruling
	Referral back to originating District Courts	After summary judgment and <i>Daubert</i> motion rulings

9. **Completion of Discovery: 120 days after the Court's *Markman* ruling**, all **factual discovery** shall be completed.
10. **Modification of Preliminary Patent Scheduling Order:** The parties may agree to modify the deadlines established by Paragraphs 1, 2, 4, 5, 6, and 9, of this Preliminary Patent Scheduling Order; provided, however, that objections to experts cannot be extended to a date less than twenty-eight (28) days before trial; and (2) any extensions to deadlines must be confirmed in writing and filed promptly thereafter with the Court. If the parties seek to extend any of the deadlines set forth in Paragraph 4, they shall file a motion seeking such an extension before the deadline

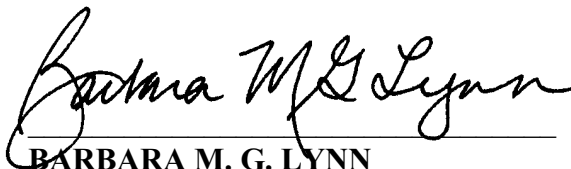
elapses. This Order shall control the disposition of this case unless it is modified by the Court upon a showing of good cause and by leave of court. Fed. R. Civ. P. 16(b).

11. Under Local Rule 7.1, unless otherwise directed by the Court, Responses to Motions must be filed by the twenty-first day after the Motion is filed, and Replies are to be filed by the fourteenth day after the date the Response is filed. If the due date falls on a Saturday, Sunday, or federal holiday, the Response or Reply is due on the next business day. Federal Rule 6(d), which provides that "[w]hen a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a)," does not apply to Response or Reply due dates, which are calculated under Local Rule 7.1 according to the Motion or Response's filing date, not the date of service. If a party is unaware of the filing date of a Motion or Response, the party may contact the Court to ascertain that information.
12. **Parties:** Whenever the name of any party, or the name of the parent of a corporate entity changes during the proceeding, counsel or, if applicable, an unrepresented party, shall advise the Court of such change, within twenty (20) days of the event. It shall be the responsibility of counsel or any unrepresented party to remain fully advised of any such developments.
13. The Court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or "stand-up" opportunities in court, particularly for young lawyers (*i.e.*, lawyers practicing for less than seven years). The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer

drafted or contributed significantly to the underlying motion or response. In those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The Court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate – such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a “bet-the-company” type case. Even so, the Court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young lawyers, to clients, and to the profession generally. Thus, the Court encourages all lawyers practicing before it to keep this goal in mind.

14. **Compliance with this Preliminary Patent Scheduling Order:** Counsel and the parties are expected to comply fully with this Order. Failure to comply will cause the Court to consider the entire range of sanctions available.
15. **Inquiries: Questions are to be directed to the law clerk, at 214-753-2418.**

IT IS SO ORDERED this 22nd day of July, 2015.



BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS