

STANDING ORDER REGARDING LETTER BRIEFS

The Court has a large number of pending patent cases on the Court's docket, resulting in voluminous pretrial motion practice. In order to increase the efficiency of cases proceeding to trial, decrease trial costs for the parties, save time for the Court and parties, and sharpen the Court's focus on the dispositive and most important issues, the Court **ORDERS**:

Letter Briefs

Prior to filing any summary judgment motion, motion to strike, or *Daubert* motion, the parties must submit a letter brief—as further described below—seeking permission to file the motion. The letter brief should be addressed to United States District Judge Leonard Davis and filed electronically by attaching the letter brief as an Exhibit to a Notice of Compliance referencing the order that directed the submission of the letter brief. Said Notice must comply with applicable local rules. Attached hereto is an exemplar of a Notice of Compliance. All letter briefs, unless specifically directed otherwise by a case-specific order, are to be submitted without attachments.

Summary Judgment Motions: The opening letter brief shall be no longer than 5 pages and shall be filed with the Court no later than 60 days before the deadline for filing summary judgment motions.¹ Answering letter briefs shall be no longer than 5 pages and filed with the Court no later than 14 days thereafter. Reply letter briefs shall be no longer than 3 pages and filed with the Court no later than 5 days thereafter.

Parties now routinely file summary judgment motions on nearly every major trial issue, regardless of whether the documentary evidence warrants summary judgment. Filing motions that

¹ Letter briefs requesting leave to file motions for summary judgment of indefiniteness must be filed no later than 55 days before the *Markman* hearing.

are not even arguably meritorious wastes clients' money and the Court's limited resources. Accordingly, the Court strongly encourages parties to only raise issues where there is no question of material fact or issues that raise significant dispositive legal issues.

Motions to Strike Expert Testimony/Daubert Motions: The opening letter brief in each *Daubert* motion or motion to strike shall be no longer than 3 pages and shall be filed with the Court no later than 60 days before the deadline for filing Motions to Strike or *Daubert* Motions. Answering letter briefs shall be no longer than 3 pages and filed with the Court no later than 14 days thereafter. Reply briefs shall be no longer than 2 pages and filed with the Court no later than 5 days thereafter.

It has become commonplace to file *Daubert* motions on nearly every opposing testifying expert. The filing of blatantly non-meritorious motions wastes a client's money and the Court's resources. The Court reminds the parties that *Daubert* motions are appropriate for experts who are not qualified to testify, not merely experts who expound theories an opposing party disagrees with.

Motions in Limine: Each side is limited to one motion *in limine* addressing no more than ten disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create a proverbial "skunk in the jury box," e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. However, parties now regularly file motions *in limine* on any issue, argument, or evidence they want kept from the jury, which is not the proper use of motions *in limine*. Accordingly, the Court limits each side to one motion *in limine* (addressing up to ten issues), and the Court instructs the parties to use them appropriately.

Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. Parties now commonly designate thousands of exhibits for trial—causing both sides to go through the expense of reviewing and objecting to those exhibits—but typically only use a handful of exhibits in front of the jury. Therefore, the Court limits the parties to designating 250 exhibits for use at trial.

Deposition Designations: Each side is limited to designating no more than 10 hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than 10 hours, the party may file a motion for leave and show good cause. Parties now routinely designate hundreds of hours of deposition testimony with corresponding exhibits—causing both sides to undergo the expense of reviewing and objecting to the testimony—but typically only use a few hours of deposition testimony at trial.

Witness Lists: In addition to identifying witnesses as “will call,” “may call,” or “probably will not call,” each side shall identify the witness’s employer and topic the witness will address, e.g., John Doe, Acme Corp., invalidity.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

P., INC.,

Plaintiff,

v.

D. CORPORATION, et al.,

Defendants.

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CIVIL ACTION NO. 6:12-CV-999

**NOTICE OF COMPLIANCE WITH COURT'S
MOTION PRACTICE ORDER**

In compliance with the Court's Motion Practice Order (Dkt. No. 20), D. Corporation files this Notice of its letter to the Court requesting permission to file a motion for summary judgment that no asserted claim of U.S. Patent No. 1,234,567 is infringed by the accused device. A copy of the letter is attached as Exhibit 1.

Respectfully Submitted,

Dated: January 20, 2012

By: /s/ Charles B. Attorney

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EXEMPLAR
Attorney for Defendant D. Corporation

CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of January, 2012, the foregoing pleading was electronically filed with the Court. Pursuant to Local Rule CV-5, this constitutes service on the following counsel:

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EXEMPLAR

EXHIBIT 1

EXEMPLAR

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January 20, 2012

The Honorable Leonard Davis
U.S. District Court for the Eastern District of Texas
200 W. Ferguson, Third Floor
Tyler, TX 75702

Re: *P., Inc. v. D. Corp.*, Civil Action No. 2:12-CV-999

Dear Chief Judge Davis:

Defendant D. Corp. respectfully requests permission to file a motion for summary judgment of non-infringement of any asserted patent in the above-captioned patent infringement case.

D. Corp. is entitled to summary judgment for the following reasons . . . { }

For the foregoing reasons, D. Corp. respectfully requests permission to file a motion for summary judgment of non-infringement.

Respectfully submitted,

{ signature }

Charles B. Attorney

cc: all counsel of record (by ECF)

EXEMPLAR
Defense Firm, LLP, 100 N. Legal St., Anywhere, Texas 00000