**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| THE DOW CHEMICAL COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>NOVA CHEMICALS CORPORATION (CANADA) and NOVA CHEMICALS INC. (DELAWARE),<br><br>Defendants. | ) | C.A. No. 05-737 (JJF) |

**RULE 16 SCHEDULING ORDER**

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures**. The parties have exchanged the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1.

2. **Joinder of other Parties**. All motions to join other parties shall be filed on or before January 31, 2008.

3. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to Magistrate Judge Stark for the purposes of exploring the possibility of a settlement. If the parties agree that they would benefit from a settlement conference, the parties shall contact the Magistrate Judge to schedule a settlement conference so as to be completed no later than the Pretrial Conference or a date ordered by the Court.

4. **Discovery**.

(a) Exchange and completion of contention interrogatories, including contentions relating to claim construction, identification of fact witnesses and document production shall be commenced so as to be completed by March 7, 2008.

(b) Maximum of 50 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 75 requests for admission by each side.

(d) Maximum of 20 depositions by each side, excluding expert depositions. With respect to depositions taken pursuant to a Rule 30(b)(6) request, each seven (7) hours of deposition testimony will constitute one deposition, regardless of the number of witnesses produced. Depositions shall not commence until the discovery required by Paragraph 3(a, b and c) is completed. Fact depositions shall be completed by July 16, 2008.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) on issues on which the party bears the burden of proof are due by August 18, 2008; responding and rebuttal reports are due September 22, 2008.

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than by November 21, 2008.

5. **Bifurcation of Willfulness**

Discovery and trial of willfulness shall be bifurcated and take place after trial on the patent infringement, validity, and enforceability issues

6. **Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The date selected shall be within 30 days of the filing of the motion and allow for briefing in accordance with the Federal and Local Rules. Available motion dates will be posted on the Court's website at www.ded.uscourts.gov.

(b) At the motion hearing, each side will be allocated twenty (20) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by email at: jjf_civil@ded.uscourts.gov.

7. **Amendment of the Pleadings**. All motions to amend the pleadings shall be filed on or before January 31, 2008.

8. **Case Dispositive Motions**. Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before January 9, 2009. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

9. **Markman**. A Markman Hearing will be held on September 11, 2008 at 8:00 a.m. After meeting and conferring regarding the identification of disputed claim terms, the parties will exchange a list of disputed claim terms -- and proposed constructions regarding those terms -- on June 18, 2008. The parties will thereafter meet and confer again in an effort to reach agreement as to the construction of any disputed terms. Simultaneous opening briefs on any unresolved claim construction issues shall be filed twenty (20) business days prior to the hearing, with any responsive briefing to be simultaneously filed at least ten (10) business days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

10. **Applications by Motion**.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware

(Amended Effective June 30, 2007). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's December 15, 2006 Order on Procedures for Filing Non-dispositive Motions in Patent Cases. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

11. **Pretrial Conference and Trial.** After reviewing the parties' Proposed Scheduling Order, the Court will schedule a Pretrial Conference.

The Court will determine whether the trial date should be scheduled when the Scheduling Order is entered or at the Pretrial Conference. If scheduling of the trial date is deferred until the Pretrial Conference, the parties and counsel shall anticipate and prepare for a trial to be held within sixty (60) to ninety (90) days of the Pretrial Conference.

DATED 3/5/08

UNITED STATES DISTRIC JUDGE

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