IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **CITIBANK, N.A.,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-272-DAE** **JURY TRIAL DEMANDED**
PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **USAA FEDERAL SAVINGS BANK,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-321-DAE** **JURY TRIAL DEMANDED**

JOINT MOTION FOR ENTRY OF SCHEDULING ORDER

Pursuant to Local Rule CV-16, plaintiff PACid Technologies, LLC, ("PACid" or "Plaintiff") and defendants Citibank, N.A. ("Citibank") and USAA Federal Savings Bank ("USAA FSB") (collectively, "Defendants") (collectively, "the Parties") file this Motion for Entry of Scheduling Order. The Parties have fundamental disputes regarding the timing and scope of the remainder of the schedule as described below. Plaintiff's proposal is provided in **Exhibit A**. Defendants' proposal is provided in **Exhibit B**.

Plaintiff's Position

Plaintiff is available for a conference regarding the disputed scheduling issues. Plaintiff opposes Defendants' proposal to limit the current schedule to claim construction and to discovery and dispositive motion practice to issues relevant to Defendants' section 101 defense.

The Court's denial of Defendants' motions to dismiss does not warrant the drastic measures Defendants propose. Although Plaintiff is mindful of the Court's preliminary statement concerning eligibility at *Alice* Step 1,[1] each Defendant limited its arguments on this issue to a single asserted claim that was not proved to be representative of all 66 asserted claims at issue. No. 24-cv-321, Doc. 34 at 9-11; No. 24-cv-321, Doc. 31 at 9-10. Further, the Court noted the existence of a factual dispute regarding inventiveness at *Alice* Step 2, No. 24-cv-321, Doc. 34 at 9-11; No. 24-cv-321, Doc. 31 at 9-10, which the parties agree will be addressed by competing expert testimony, making summary determination of Defendants' section 101 defense inappropriate.[2] These facts stand in stark contrast to *Moxchange v. Ale* relied on by Defendants. Unlike this case, the plaintiff in *Moxchange* "identified specific claims of each asserted patent as representative for purposes of the § 101 analysis," No. 1:20-cv-01123-LPS (D. Del.), Doc. 25 at 5, and the defendants "pointed to what appears to be an impressive amount of evidence to support their position [regarding conventionality at Step 2, including] the specification and file history where the purported inventive concept may have been identified and described as non-inventive." No. 1:20-cv-01123-LPS (D. Del.), Doc. 24 at 11-12.

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[1] Plaintiff respectfully disagrees with the Court's preliminary statement and is prepared to address this issue in conference if the Court so desires.

[2] *Crown Packaging Tech v. Ball Metal Beverage Container*, 635 F.3d 1373, 1384 (Fed. Cir. 2011) ("Where there is a material dispute as to the credibility and weight that should be afforded to conflicting expert reports, summary judgment is usually inappropriate."); *Leggett & Platt v. Hickory Springs Mfg.*, 285 F.3d 1353, 1362 (Fed. Cir. 2002) (summary judgment inappropriate because "the conflicting allegations of experts here leave unresolved factual disputes").

As a result, Defendants' proposal to conduct this case in serial, piecemeal fashion would not secure the "just, speedy, and inexpensive" determination of this action as Defendants' contend, but instead would cause unnecessary delay and expense. Plaintiff filed these actions against Defendants over a year ago in March 2024. Although the Complaints assert numerous claims of the six Patents-in-Suit and contain concrete allegations of the claims' inventiveness, Defendants chose to file motions to dismiss that (1) challenged the eligibility of only a single asserted claim without proving representativeness; and (2) ignored the fact questions raised by Plaintiff's allegations. The Court denied the motions to dismiss on February 27, 2025, noting these deficiencies. Mindful of the Court's practice, Plaintiff sought entry of a schedule after the decisions on the motions to dismiss. At this stage, preventing Plaintiff from prosecuting its case while allowing Defendants to pursue claim construction, discovery, and motion practice on their section 101 defense would be unfair.

Plaintiff's proposed schedule, attached as **Exhibit A**, follows the exemplary schedule set forth in Judge Albright's March 5, 2025, "Standing Order Governing Proceedings (OGP)-Patent Cases,"[3] but, given the amount of time the cases have been pending, allows discovery to proceed from the service of the Parties' Initial Disclosures on June 13, 2025. Contrary to Defendants' claim, Plaintiff's schedule does not "compress[] major case milestones" under the OGP. Plaintiff's schedule sets June 13, 2025, as the date for service of Plaintiff's Preliminary Infringement Contentions, which will allow the Court at least some time to consider the scheduling disputes between the parties, instead of May 30, 2025, one day after the filing of this Motion, as proposed by Defendants. Although Defendants' proposed schedule purports to seek a stay of discovery until

[3] *See* Appendix A – Exemplary Schedule available at: https://www.txwd.uscourts.gov/wp-content/uploads/2025/03/ADA-Standing-Order-Governing-Proceedings-Patent-Cases-ATX_3.5.25.pdf.

Markman by "mirror[ing]" the OGP, it actually imposes immediate discovery burdens on Plaintiff not required by the OGP, such as forcing Plaintiff to produce "license agreement[s], covenant[s] not to sue, and settlement agreement[s]" with its Infringement Contentions at the outset of the case. If Defendants are permitted to seek general discovery relevant to issues they deem important, Plaintiff should be allowed to do the same.

Defendants' Position[4]

Defendants' proposed schedule mirrors the exemplary schedule set forth in Judge Albright's March 5, 2025, "Standing Order Governing Proceedings (OGP)-Patent Cases" ("OGP") through the claim construction (i.e., the *Markman* hearing), which sequentially addresses claim construction and then fact discovery.[5] Contrary to Plaintiff's representation, nothing in Defendants' proposed schedule limits claim construction in any way or constrains it to issues relating to the § 101 defense. *See* **Exhibit B**. Following the *Markman* hearing, however, Defendants' proposed schedule provides for a limited and shortened discovery and dispositive motion practice focused on the issues relevant to Defendants' § 101 defense. The § 101-focused fact discovery period proposed by Defendants is intended to efficiently secure the just, speedy, and inexpensive determination of the case dispositive § 101 issue. *See* Fed. R. Civ. P. 1.

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[4] Judge Albright has publicly stated that his patent schedule designed to streamline patent litigations in a fair and neutral manner. In a May 18, 2022 podcast, Judge Albright indicated that he deliberately withholds fact discovery until the after the Markman hearing so "both sides [] share the expense" with the goal of stopping plaintiffs from using discovery costs to force early settlements. See Law Disrupted Podcast Hosted by John Quinn available at https://law-disrupted.fm/the-judge-who-hears-25-of-patent-cases-in-the-us/. Judge Albright explained that his schedule was the product of a committee of lawyers from every practice posture, resulting in a schedule that is even-handed and "completely agnostic" to both sides. *Id*. Further, Judge Albright indicated that early claim-construction had the effect of providing both clarity and trimming dead-end discovery. *Id*.

[5] *See* Appendix A – Exemplary Schedule available at: https://www.txwd.uscourts.gov/wp-content/uploads/2025/03/ADA-Standing-Order-Governing-Proceedings-Patent-Cases-ATX_3.5.25.pdf

To that end, Defendants propose an expedited § 101-focused fact discovery period that is consistent with the Court's Orders entered on February 27, 2025 (Doc. 34) denying Defendants' 12(B)(6) § 101 Motions to Dismiss, both of which noted that "claim construction and development of facts that may inform the Section 101 analysis."[6] Importantly, the Court's Order noted that "There is no doubt that Defendant may prevail in this litigation. Going forward, the Court is skeptical of PACid's ability to demonstrate that its patents are directed towards something other than an abstract idea." *Id*. Defendants' proposal is also consistent with other cases wherein courts have either adopted a party's scheduling proposal with the goal of resolving a disputed dispositive issue or sanctioned the idea of doing so. For example.:

- *Moxchange LLC v. Ale USA Inc. et al.,* Case No. 1:20-cv-01123-LPS (DED), Dkt. 25 (Proposed Scheduling Order); *Id.* at Dkt. 27 ("ORAL ORDER: Having reviewed the parties' proposals with respect to scheduling (*see, e.g.,* C.A. No. 20-1123 D.I. 25), IT IS HEREBY ORDERED that the Court ADOPTS Defendants' proposal for an expedited Markman proceeding, to allow the Court to construe the three claim terms identified by Plaintiff as requiring construction prior to a decision on patent eligibility, to be followed (if necessary) by additional proceedings, including the potential of a renewed Section 101 motion.").

- *Mark W. Kilbourne v. Apple Inc*., Case No. 4:17-cv-03283 (SDTX), Dkt. 50 (Early Claim Construction Schedule) (Adopting Plaintiff's proposal for early claim construction and dispositive motions focused on the § 101 issue set forth in Plaintiff's Opposition to Defendant's Motion to Stay (*see* Dkt. 49 at 15-16).).

- *MyMail, Ltd. v. Samsung Electronics Co., Ltd. et al*., Case No. 2:18-cv-00017-JRG-RSP (EDTX), Dkt. 29 (Joint Motion for Entry of Proposed DCO with Disputed Provisions for Resolution by the Court); *Id.* at Dkt. 33, August 7, 2018, Docket Control Order (Adopting Defendants' early claim construction hearing to construe two terms that go to the heart of the infringement case.).

- *Aatrix Software, Inc. v. Green Shades Software, Inc*., 882 F.3d 1121, 1125 (Fed. Cir. 2018) (In reversing a district court's 12(b)(6) ruling, the Federal Circuit recognized that "If there are claim construction disputes at the Rule 12(b)(6) stage, we have held that either the court must proceed by adopting the non-moving party's constructions, or the court must resolve the disputes to whatever extent is needed to conduct the § 101

[6] *PACid Technologies, LLC v. Citibank*, N.A., Case No. 1:24-cv-272-DAE, Dkt. 34 at 10; *PACid Technologies, LLC v. USAA Federal Savings Bank*, Case No. 1:24-cv-321-DAE, Dkt. 31 at 9-10.

analysis, which may well be less than a full, formal claim construction.”).

- *Jack Guttman, Inc. v. Kopykake Enters., Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002) (“District courts may engage in a rolling claim construction, in which the court revisits and alters its interpretation of the claim terms as its understanding of the technology evolves.”).

Plaintiff’s proposed schedule, in contrast, frontloads both discovery and claim construction, resulting in a schedule that is faster, less efficient, and more burdensome. It deviates from Judge Albright’s OGP and requires the Parties to address claim construction and fact discovery in parallel, compressing major case milestones, placing additional burdens on the Court. The speed and burden imposed by Plaintiff’s proposed schedule is no accident. As indicated in USAA FSB’s *Inter Partes* Review (“IPR”) Notice, it filed six IPRs on all asserted patents on March 26 and 27, 2025.[7] Plaintiff’s discretionary denial briefs filed two months later on May 27, 2025, leverage its proposed schedule to its advantage, arguing that the speed and early milestones reflected in its proposal (***but not Defendants’***) militates for denying those pending IPR petitions.[8] In short, despite having taken virtually no action in this case since its filing over a year ago, Plaintiff’s hurried schedule appears to be a means to avoid IPR institution.

As an alternative to Defendants’ proposed § 101-focused fact discovery period, Defendants propose entering a schedule based on the exemplary schedule in Judge Albright’s OGP.

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[7] *See PACid Technologies, LLC v. USAA Federal Savings Bank*, Case No. 1:24-cv-321-DAE, Dkt. 32.

[8] *See, e.g.*, IPR IPR2025-00752, Patent Owner Discretionary Denial Brief at pg. 8 (May 27, 2025) (“[T]he version of the scheduling order that Patent Owner intends to submit for entry, the following will likely occur prior to a final written decision in this IPR: service of infringement and invalidity contentions; filing of claim construction briefing; completion of fact and expert discovery; and filing of dispositive motions. ***Because institution of the IPR would be an inefficient use of Board and party resources, this factor also weighs in favor of denial of institution***.”) (emphasis added).

Dated: May 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2025, a true and correct copy of the foregoing document was caused to be served on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ Christopher V. Goodpastor
Christopher V. Goodpastor

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **CITIBANK, N.A.,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-272-DAE** **JURY TRIAL DEMANDED**
PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **USAA FEDERAL SAVINGS BANK,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-321-DAE** **JURY TRIAL DEMANDED**

SCHEDULING ORDER

Date	Milestone
June 13, 2025	Plaintiff serves preliminary infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found.[1] Plaintiff shall also identify the earliest priority date (i.e., the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention; and (2) a copy of the file history for each patent in suit.

[1] The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and that the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims or prior art requires leave of court so that the Court can address any scheduling issues.

June 13, 2025	Parties shall serve Initial Disclosures required by Fed. R. Civ. P. 26(a). Fact discovery opens.
June 13, 2025	Parties shall file with the Court a proposed Protective Order relating to confidentiality and privileged materials (pursuant to Federal Rule of Evidence 502).
August 8, 2025	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101.[2] Defendant shall also produce: (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
August 22, 2025	Parties exchange claim terms for construction.
September 5, 2025	Parties exchange proposed claim constructions.
September 12, 2025	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony.[3] With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
September 19, 2025	Deadline to meet and confer to narrow terms in dispute to twelve (12) disputed terms or fewer and exchange revised list of terms/constructions.
September 26, 2025	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite (up to 25 pages).
October 17, 2025	Plaintiff files Responsive claim construction brief (up to 25 pages).
October 31, 2025	Defendant files Reply claim construction brief (up to 10 pages).
November 14, 2025	Plaintiff files Sur-Reply claim construction brief (up to 10 pages).

[2] The § 101 contention shall (1) identify the alleged abstract idea, law of nature, and/or natural phenomenon in each challenged claim; (2) identify each claim element alleged to be well-understood, routine, and/or conventional; and (3) to the extent not duplicative of §§ 102/103 prior art contentions, prior art for the contention that claim elements are well-understood, routine, and/or conventional.

[3] Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

November 19, 2025	Parties submit Joint Claim Construction Statement.
November 21, 2025	Parties submit optional technical tutorials to the Court.[4]
December 5, 2025	*Markman* hearing.
January 16, 2026	Deadline to add parties.
January 30, 2026	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
March 27, 2026	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.).
May 8, 2026	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court to arrange a teleconference with the Court to resolve the disputed issues.
May 15, 2026	Close of Fact Discovery.
June 3, 2026	Opening expert reports.
July 1, 2026	Rebuttal expert reports.
July 22, 2026	Close of expert discovery.
July 29, 2026	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
August 5, 2026	Dispositive motion deadline and *Daubert* motion deadline.[5]

[4] In general, tutorials should be: (1) directed to the underlying technology (rather than argument related to infringement or validity), and (2) limited to 15 minutes per side. The tutorial will not be part of the record and the parties may not rely on or cite to the tutorial in other aspects of the litigation.

[5] The number of motions for summary judgment (MSJs) or *Daubert* motions is not limited. However, absent leave of Court, the cumulative page limit for opening briefs for all MSJs is 40 pages per side, for all *Daubert* motions is 40 pages per side, and for all MILs is 15 pages per side. Each responsive MSJ, Daubert, and MIL brief is limited to the pages utilized in the opening brief or by the local rules, whichever is greater; and the cumulative pages for responsive briefs shall be no more than cumulative pages utilized in the opening briefs. Reply brief page limits shall be

	The Court will set the case for final pretrial conference and trial by separate order. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) - (g) regarding matters to be filed in advance of the final pretrial conference. After the pretrial conference has been set, the parties shall meet and confer prior to the final pretrial conference to agree upon and submit a schedule for the exchange of pretrial materials.

governed by the local rules, but in no event shall the cumulative pages of reply briefs exceed 20 pages per side for all MSJs, 20 pages per side for all *Daubert* motions, and 10 pages for all MILs.

IT IS SO ORDERED.

SIGNED on _____, 2025.

_____
DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **CITIBANK, N.A.,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-272-DAE** **JURY TRIAL DEMANDED**
PACID TECHNOLOGIES, LLC, ***Plaintiff*,** **v.** **USAA FEDERAL SAVINGS BANK,** ***Defendant.***	**CIVIL ACTION NO. 1:24-cv-321-DAE** **JURY TRIAL DEMANDED**

DEFENDANTS' PROPOSED SCHEDULING ORDER[1]

[1] These cases are not consolidated. Defendants object to a scheduling order applicable to the cases as if the cases were consolidated and do not agree to a consolidated trial.

Date	Milestone
May 30, 2025	Plaintiff serves preliminary infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found.[2] Plaintiff shall also identify the earliest priority date (i.e., the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention; (2) a copy of the file history for each patent in suit; and (3) any license agreement, covenant not to sue, or settlement agreement relating to the asserted patents.[3]
July 25, 2025	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce: (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
August 8, 2025	Parties exchange claim terms for construction.[4]
August 22, 2025	Parties exchange proposed claim constructions.
August 29, 2025	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony.[5] With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
September 5, 2025	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.

[2] The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and that the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

[3] The disclosures required by clause (3) are intended to foster settlement discussions.

[4] The parties' exchange shall include a list of claim terms that any party contends requires construction by the Court in consideration of Defendant's Section 101 defense.

[5] Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

September 12, 2025	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite (up to 25 pages).
October 3, 2025	Plaintiff files Responsive claim construction brief (up to 25 pages).
October 17, 2025	Defendant files Reply claim construction brief (up to 10 pages).
October 31, 2025	Plaintiff files Sur-Reply claim construction brief (up to 10 pages).
November 3, 2025	Parties submit Joint Claim Construction Statement.
November 4, 2025	Parties submit optional technical tutorials to the Court.
November 14, 2025	*Markman* hearing.
November 15, 2025	Opening of limited fact discovery and deadline to serve Initial Disclosures per Rule 26(a). Fact discovery during this period is limited to the issues pertinent to resolving the Defendant's section 101 defense. The parties may serve up to ten (10) interrogatories per Side; twenty (20) requests for production per Side; and twenty (20) requests for admission per Side.[6] Fact depositions during this period shall be limited to 20 hours per Side (for both party and non-party witnesses combined).
January 15, 2026	Close of limited fact discovery and opening of limited expert discovery. Expert depositions during this period shall be limited to three (3) hours per report.
February 6, 2026	Opening expert reports relating to the section 101 issue.
March 6, 2026	Rebuttal expert reports relating to the section 101 issue.
March 31, 2026	Close of limited expert discovery relating to the section 101 issue(s).
April 30, 2026	Dispositive motion deadline and *Daubert* motion deadline relating to the section 101 issue.
7 days after the Court's ruling on dispositive motions	Status conference (if needed).

[6] A "Side" shall mean the plaintiff (or related plaintiffs suing together) on the one hand, and the defendant (or related defendants sued together) on the other hand. If the Court consolidates related cases for pretrial purposes, with regard to calculating limits imposed by this OGP, a "Side" shall be interpreted as if the cases were proceeding individually. For example, in consolidated cases the plaintiff may serve up to ten (10) interrogatories on each defendant, and each defendant may serve up to ten (10) interrogatories on the plaintiff.

IT IS SO ORDERED.

SIGNED on _____, 2025.

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DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE