

Federal Court of Australia
District Registry: [State]
Division: [Division]

Applicant/Cross Respondent

Respondent/Cross-Claimant

TOPICS FOR JOINT EXPERT CONFERENCES

Dear Experts

The Court asks you to consider and discuss a series of topics set out below. At the conclusion of your discussion, the Court asks you to prepare a joint report and to provide this report to the parties by [date].

In your joint report you are to briefly identify what you agree upon and where you disagree, why you disagree. You are encouraged to reach agreement on a subject where you consider it is possible to do so consistently with your knowledge and opinions on that subject, even if your opinion, at the time of your discussion, differs in some respects from the opinion expressed in your affidavit evidence. Sometimes apparent differences between experts are resolved by discussion and turn out to be an artefact of the process of affidavit drafting. Sometimes discussion enables disagreements to be clarified, and the scope of the dispute narrowed or eliminated. Experts are encouraged to approach the discussion with an open mind, with a view to assisting the Court. However, you should not feel pressured to agree to any matter that is not consistent with your knowledge and opinions on that subject.

The experts are required to comply with the following guidelines when they are preparing their joint expert report:

- (a) In the period from the commencement of the expert meeting to the signing of the joint report, the experts must not communicate with the parties, their lawyers or counsel regarding the case except with the consent of the other party or as set out in sub-paragraphs (b) and (c) below.
- (b) If any expert requires guidance in relation to a matter of procedure during this period, then the expert should send their enquiry by email to Registrar [name] (email), copying their assistant, [email], and the other expert or experts.
- (c) An expert may communicate with the lawyers for a party for the purpose of getting assistance with logistical arrangements such as travel or teleconferencing but may not, in the course of that communication, discuss or disclose any substantive issue the subject of the meeting (or any aspect of it) with those legal representatives.
- (d) The experts are asked to discuss and decide between themselves how a final report is to be prepared. By way of example only, following discussion of a particular topic or topics, each expert might initially prepare their own draft response and exchange them before further discussion, or the experts may divide up

responsibility for preparing a first draft response on each topic that reflects the outcome of the discussion on that topic, with the report then to be collated, reviewed, amended as required and approved by each expert before it is finalised.

- (e) All draft versions of the report and draft materials exchanged are to remain confidential to the experts and must not be given or shown to the parties' lawyers or counsel in any jurisdiction either during or after the conclusion of the expert meeting.
- (f) The experts should also re-read and comply with Federal Court's Expert Evidence Practice Note (GPN-EXPT) (including, Annexure A and Annexure B).

Note 1: In relation to all of the following topics you are asked to discuss and then identify in your joint report: (i) where you agree (ii) where you disagree; and (iii) in summary, the reasons for any disagreement. Cross-referencing to your affidavit evidence may be undertaken to avoid substantial repetition.

Note 2: In relation to the topics which require you to consider the disclosure or teaching of the Patent, or the prior art publications and devices, you are to comment on that disclosure or teaching as at the priority date of the Patent, namely [date].

Note 3: The list of topics below includes references to passages of affidavit evidence that discuss matters that are relevant to each topic. Those references are for convenience only and are not intended to confine the matters you should discuss, if you consider them to be relevant to the topic.

Note 4: Once approved by all conference participants, the joint report is to be sent by [date] in a single email addressed to:

Registrar:

Solicitor:

Solicitor: