

In the United States Court of Federal Claims

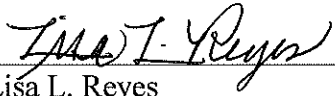
NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to 28 U.S.C. §§ 2071(b) and 2503(b), the United States Court of Federal Claims hereby provides notice that it proposes to amend its rules and invites public comment on the proposed amendments. The proposed amendments affect RCFC 5.2, 9, 23, and 52.2 and Appendix C. In addition, this proposal introduces new Appendix J and new Forms 8A and 9A. All proposed changes are shown by strikethrough and yellow highlighting.

Comments must be received by May 25, 2018, and addressed to:

Lisa L. Reyes
Clerk of Court
United States Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439

Absent further notice, these amendments will take effect July 1, 2018.



Lisa L. Reyes
Clerk of Court

Issued: April 10, 2018

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Proposed Amendments to Rules 5.2 and 9(m)

Rule 5.2. Privacy Protection For Filings Made with the Court

- (a) **Redacted Filings.** Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:
- (1) the last four digits of the social-security number and taxpayer-identification number (see RCFC 9(m) when pleading a claim for a tax refund);
 - (2) the year of the individual's birth;
 - (3) the minor's initials; and
 - (4) the last four digits of the financial-account number.

* * *

(Added Nov. 3, 2008; as amended July 1, 2018.)

Rules Committee Notes

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2018 Amendment

RCFC 5.2(a) has been amended to reference RCFC 9(m) which includes additional pleading requirements for a tax refund claim.

Rule 9. Pleading Special Matters

* * *

- (m) **Tax Refund Claim.** In pleading a claim for a tax refund, a party must:
- (1) file the pleading under seal along with a redacted version of the pleading that conforms to RCFC 5.2; and
 - (2) include:
 - (A) a copy of the claim for refund, and
 - (B) a statement identifying:

- (i) the tax year(s) for which a refund is sought;
- (ii) the amount, date, and place of each payment to be refunded;
- (iii) the date and place the return was filed, if any;
- (iv) the name, address, and identification number of the taxpayer(s) appearing on the return;
- (v) the date and place the claim for refund was filed; and
- (vi) the identification number of each plaintiff, if different from the identification number of the taxpayer.

* * *

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008; July 2, 2012, July 1, 2018.)

Rules Committee Notes

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2018 Amendment

RCFC 9(m) has been amended to require the filing of a redacted version of the pleading that conforms to RCFC 5.2.

Proposed Amendment to Rule 23

Rule 23. Class Actions

* * *

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

* * *

(2) Notice.

- (A) [Not used.]
- (B) For any class certified under RCFC 23(b), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:
 - (i) the nature of the action;
 - (ii) the definition of the class certified;
 - (iii) the class claims, issues, or defenses;
 - (iv) that a class member may enter an appearance through an attorney if the member so desires;
 - (v) that the court will include in the class any member who requests inclusion;
 - (vi) the time and manner for requesting inclusion; ~~and~~
 - (vii) the binding effect of a class judgment on members under RCFC 23(c)(3); and
 - (viii) that the court may permit withdrawal from the class of a member who initially requested inclusion.

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Rules Committee Notes

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2018 Amendment

RCFC 23(c)(2)(B) has been amended by adding item (viii) to allow withdrawal from the class of a member who initially requested inclusion.

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, Jan. 11, 2010, July 1, 2018.)

Proposed Amendment to Rule 52.2

Rule 52.2. Remanding a Case

* * *

~~(c) **Administrative Record.** After serving the remand order, the clerk must transmit the administrative record, if any, to the Department of Justice for return to the administrative or executive body or official to whom the order is directed.~~

* * *

(As revised and reissued May 1, 2002; as renumbered June 20, 2006; as amended Nov. 3, 2008, Aug. 3, 2015, Aug. 1, 2017, July 1, 2018.)

Rules Committee Notes

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2018 Amendment

Former RCFC 52.2(c), requiring the return of the administrative record to the administrative or executive body or official to whom the remand order is directed, has been deleted as no longer necessary.

Proposed Amendment to Appendix C
("Procedure in Procurement Protest Cases
Pursuant to 28 U.S.C. § 1491(b)")

* * *

VI. PROTECTIVE ORDERS

* * *

18. Application for Admission to the Protective Order.

(a) Each party seeking access to protected information on behalf of an individual must file with the court an appropriate "Application for Access to Information Under Protective Order" (*see* Appendix of Forms, Forms 9 and 10). The application may also be amended by the court in response to individual case needs.

(b) Objections to an application for access must be filed with the court within 2 **business** days after a party's receipt of the application.

* * *

Rules Committee Notes

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2018 Amendment

In the interest of internal consistency, Paragraph 18 has been amended to clarify that objections must be filed with the court within 2 *business* days after a party's receipt of an application for access.

APPENDIX J
PATENT RULES OF THE UNITED STATES
COURT OF FEDERAL CLAIMS

I. SCOPE OF RULES

Rule 1. Scope of Rules

- (a) **In General.** These rules, cited as PRCFC, supplement the Rules of the United States Court of Federal Claims for civil actions instituted in the United States Court of Federal Claims under 28 U.S.C. § 1498(a) respecting patent claims.
- (b) **Modification.** The court may modify the requirements or deadlines set forth in these rules based on:
- (1) the complexity of the case; or
 - (2) for good cause shown.

II. PRELIMINARY PROCEEDINGS

Rule 2. Early Meeting of Counsel

- (a) **In General.** When the parties confer pursuant to RCFC Appendix A, ¶ 3, in addition to the matters required to be addressed under that paragraph, the parties also should discuss the following topics for inclusion in the Joint Preliminary Status Report filed pursuant to RCFC Appendix A, ¶ 4:
- (1) proposed modification of the obligations or deadlines set forth in these rules to ensure that they are suitable for the circumstances of the case;
 - (2) the scope and timing of any claim construction discovery;
 - (3) the format of the claim construction hearing;
 - (4) how the parties intend to educate the court on the technology at issue;
 - (5) whether each patent at issue has been, or is likely to be, subject to re-examination proceedings; and
 - (6) whether other litigation or *inter partes* proceedings are ongoing or anticipated and whether any parties will seek a stay, consolidation, coordination, or transfer.

Rule 3. Joint Preliminary Status Report

For purposes of these rules, the Joint Preliminary Status Report required pursuant to RCFC Appendix A, ¶ 4, must be filed within 49 days after the filing of the answer or within 98 days after the filing of the answer in the event the United States has filed a motion pursuant to RCFC 14 to notify interested parties and the court has granted the motion.

III. PATENT DISCLOSURES

Rule 4. Preliminary Disclosure of Infringement Contentions

Within 56 days after the filing of the answer, the plaintiff must serve on the defendant and any defendant-intervenors a Preliminary Disclosure of Infringement Contentions that includes the following information:

- (a) the claim in each product, process, or method of each patent at issue that is allegedly infringed by each opposing party;
- (b) for each asserted claim, each product, process, or method that allegedly infringes the identified claim. This identification must include the name and model number, if known, of the accused product, process, or method;
- (c) a chart identifying where each element of each asserted claim is found within each accused product, process, or method, including the name and model number, if known;
- (d) whether each element of each identified claim is alleged to be literally present or present under the doctrine of equivalents in the accused product, process, or method; and
- (e) for each patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled and whether the patentee is relying on the filing date or an earlier conception date as the priority date.

Rule 5. Document Production Accompanying Preliminary Disclosure

Together with the Preliminary Disclosure of Infringement Contentions, the plaintiff must produce to each opposing party or make available for inspection and copying:

- (a) all documents that evidence any disclosure, sale, transfer, or offer to disclose, sell, or transfer the claimed invention prior to the date of application for each patent at issue;
- (b) all documents that evidence the conception and first reduction to practice of each claimed invention that was created on or before the date of application for each patent at issue or the priority date identified in PRCFC 4(e);
- (c) the file history with the United States Patent and Trademark Office for each patent at issue; and
- (d) all documents that evidence ownership of the patent rights by the plaintiff.

Nothing in this disclosure may be considered an admission as to prior art or evidence of prior art pursuant to 35 U.S.C. §§ 102, 103.

Rule 6. Preliminary Disclosure of Invalidity Contentions

Within 56 days after the filing of the Preliminary Disclosure of Infringement Contentions, or as otherwise ordered by the court, the defendant and any defendant-intervenors must serve on all parties a Preliminary Disclosure of Invalidity Contentions containing the following information:

- (a) the identity of each item or combination of items of prior art that allegedly anticipates each asserted claim or renders that claim obvious;
 - (1) each prior art reference must be identified by number, country of origin, and date of issue;
 - (2) each prior art publication must be identified by title, date of publication, and, where feasible, author and publisher;
 - (3) prior art that evidences public use or sale must also specify the item publicly used or offered for sale, the date the use or offer took place, and the identity of the persons or entities that made the use or

sale, or offer, and/or received an offer; and

- (4) the prior art reference must include a description of where, in each alleged item of prior art, each element of each asserted claim is found;
- (b) an explanation of how each item of prior art, or combination thereof, anticipates each asserted claim and/or renders it obvious; and
- (c) the identity and explanation of any other basis for invalidity, or unenforceability of any of the asserted claims.

Rule 7. Document Production Accompanying Preliminary Disclosure of Invalidity Contentions

Together with the Preliminary Disclosure of Invalidity Contentions, the defendant and any defendant-intervenors must produce to each opposing party, or make available for inspection or copying:

- (a) documents that evidence the operation of any aspects or elements of the accused product, process, or method identified by the plaintiff as allegedly infringing; and
- (b) a copy of any additional items of prior art identified that do not appear in the file history of each patent at issue.

Rule 8. Response to Preliminary Disclosure of Invalidity Contentions

Within 28 days after the filing of the Preliminary Disclosure of Invalidity Contentions, the plaintiff may file and serve on the defendant and any defendant-intervenors a response. Thereafter, unless the defendant and any defendant-intervenors request otherwise, the court promptly will proceed to adjudicate invalidity contentions before claim construction.

IV. CLAIM CONSTRUCTION

Rule 9. List of Proposed Claim Terms for Construction

- (a) **In General.** Within 42 days after the filing of any response to the Preliminary Disclosure of Invalidity Contentions, each party must serve on all other parties a List of Claim Terms for Construction by the court

and identify any claim terms that the party contends should be governed by 35 U.S.C. § 112(f).

- (b) **Number of Terms.** Unless a showing of good cause is made and granted by the court, no more than 15 terms per patent may be requested for construction.
- (c) **Designation.** For each claim term to be construed, the parties must indicate whether it may be case or claim dispositive.

Rule 10. Exchange of Proposed Claim Terms for Construction

- (a) **In General.** Within 28 days after receipt of the List of Proposed Claim Terms for Construction, each party must serve on all other parties a proposed construction for each claim term to be construed. Each party's proposed construction must identify all intrinsic and extrinsic evidence that supports the proposed construction.
- (b) **Narrowing the Number of Terms.** Within 7 days after the exchange of proposed claim terms, all parties must meet and confer in an attempt to further narrow the number of claim terms.

Rule 11. Joint Claim Construction Chart

Within 35 days after the exchange of proposed claim terms, the parties must file a Joint Claim Construction Chart that includes:

- (a) the claim terms and construction on which the parties agree; and
- (b) each party's proposed construction of each disputed claim term, together with identification of intrinsic and extrinsic evidence on which the proposing party intends to rely.

Rule 12. Joint Claim Construction Appendix and Prehearing Statement

At the time the Joint Claim Construction Chart is filed, the parties must also file:

- (a) a Joint Claim Construction Appendix and Prehearing Statement listing each patent at issue and the prosecution history for each;
 - (1) the prosecution history must be paginated and cited as the Joint Appendix ("JA") when referenced; and

- (2) any party may also file a separate appendix containing other supporting material;

- (b) each party's proposed definition of a Person of Ordinary Skill in the Art, or if the parties agree, a joint definition of a Person of Ordinary Skill in the Art;
- (c) a proposed schedule for the Claim Construction Hearing;
- (d) whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, together with the identity of each witness and a short summary of the anticipated testimony; and
- (e) whether any party intends to request a hearing on invalidity or indefiniteness.

Rule 13. Completion of Claim Construction Discovery

Within 28 days after the filing of the Joint Claim Construction Appendix and Prehearing Statement, the parties must complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction Appendix and Prehearing Statement.

Rule 14. Claim Construction Status Conference

Within 7 days after the filing of the Joint Claim Construction Appendix and Prehearing Statement, the court will schedule a status conference, to be held within 90 days thereafter, to set the date for the Claim Construction Hearing and discuss any other relevant matters with the parties.

Rule 15. Claim Construction Briefs

- (a) Claim Construction Briefs are optional and any party may elect instead to rely on the Joint Claim Construction Chart.
- (b) Claim Construction Briefs must be filed after the Joint Claim Construction Chart according to the following schedule:
 - (1) within 56 days, the plaintiff must file a Claim Construction Brief;
 - (2) within 28 days thereafter, each opposing party must file a Responsive Claim Construction Brief; and

- (3) within 14 days after the filing of the Responsive Claim Construction Brief(s), the plaintiff may file a Reply Claim Construction Brief.

V. SETTLEMENT

Rule 16. Mandatory Settlement Discussions

The parties must meet and confer, in person or by telephone:

- (a) within 7 days after entry of the court's Claim Construction Opinion and Order;
- (b) within 7 days after entry of the court's Validity or Indefiniteness Opinion and Order, if the case is not dismissed; and
- (c) within 7 days after the conclusion of trial.

Rule 17. Joint Statement of Compliance With Mandatory Settlement Discussions

Within 7 days after each settlement discussion, the parties must file with the court:

- (a) a joint statement of compliance with PRCFC 16, indicating that settlement discussions were conducted and apprising the court of the outcome; or
- (b) a motion requesting that the case be dismissed.

VI. OTHER

Rule 18. Stay of Proceedings

- (a) **In General.** On motion, the court may stay the case pending a proceeding before the United States Patent and Trademark Office that concerns each patent at issue, *e.g.*, re-examination, *inter partes* review, or any other post-grant review proceeding.
- (b) **Grounds for a Stay.** Whether the court stays the case depends on the circumstances of the case, including:
 - (1) the stage of the litigation;
 - (2) whether a stay will simplify the issues; and
 - (3) whether a stay unduly will prejudice or present a clear tactical disadvantage to the nonmoving party.

Rule 19. Confidentiality

- (a) **In General.** Absent court order, discovery may not be withheld on the basis of confidentiality.
- (b) **Protective Order.** The court may issue a protective order at its discretion. A sample protective order for patent cases is found at Appendix of Forms, Form 8A.

Rule 20. Good Faith Participation

Failure to make a good faith effort to comply with these rules may subject counsel to sanctions.

Rule 21. Certification of Disclosures

All disclosures made pursuant to these rules must be dated and signed by counsel of record (or by the party if not represented by counsel) and are subject to the requirements of RCFC 26(g).

Rule 22. Admissibility of Disclosures

Statements, disclosures, or charts are admissible to the extent permitted by the Federal Rules of Evidence.

Rule 23. Supplementation Requirements

The requirements to supplement disclosure and discovery responses under RCFC 26 apply to all disclosures required by these rules.

Rule 24. Amendments

The duty to amend or supplement does not excuse the requirement to obtain leave of the court. A party may amend the Preliminary Disclosure of Infringement Contentions or the Preliminary Disclosure of Invalidity Contentions only by court order upon a showing of good cause.

Rules Committee Note 2018 Adoption

The United States Court of Federal Claims Patent Rules, under 28 U.S.C. § 1498(a), supplement the court's existing rules by providing a structure to facilitate the fair and expeditious resolution of patent cases. The complexity of an individual case may require the assigned judge to make adjustments to these rules in the interest of justice.

2. By identifying a document as “Restricted,” a party may designate any document, including an interrogatory response, another discovery response, and/or a transcript, that it, in good faith, contends constitutes or contains trade secret, proprietary, source-selection sensitive, or other similar confidential information that the owner thereof has taken reasonable measures to protect from disclosure to the public or competitors. In the case of the United States, other information and documents that may be identified as “Restricted” include:

- (a) documents categorized as “FOR OFFICIAL USE ONLY,” including unclassified information in the possession or under the control of the Department of Defense; and
- (b) trade secret, proprietary, source-selection sensitive, or other similar confidential information belonging to non-parties but within the control or custody of the United States.

3. All “Restricted” documents, along with the information contained in the documents, may be used solely for the purpose of this litigation and no person receiving such documents may directly or indirectly transfer, disclose, or communicate the contents of the documents in any way to any person other than those specified in Paragraph 4 below. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of other intellectual property rights.

4. Without a court order, access to any “Restricted” document will be limited to:

- (a) the court and its personnel;
- (b) attorneys of record in this litigation, to the extent they have agreed to be bound by this Protective Order, and any members or employees of their respective law firms, or in the case of the United States, the attorneys, legal assistants, and legal support staff of the Department of Justice and any agency or department of the United States involved in this litigation;
- (c) persons shown on the face of the document to have authored or received it;
- (d) litigation support contractors;
- (e) inside counsel of the parties, subject to the conditions of Paragraph 8 below;
- (f) a party’s officers and employees directly involved in this litigation whose access to the information is reasonably required to supervise, manage, or participate in this litigation, subject to the conditions of Paragraph 8 below;
- (g) experts, subject to the conditions of Paragraph 8 below; and
- (h) any other person or entity that the parties (including any third party, to the extent the third party has designated the document as “Restricted”) mutually agree in writing may have access to “Restricted” documents.

5. The parties have the right to further designate “Restricted” documents or portions thereof as “Restricted—Attorneys’ Eyes Only.” Without a further court order, however, disclosure of such information will be limited to the persons designated in Paragraphs 4(a), (b), (c), and (d) and, in addition, persons designated in Paragraph 4(h), to the extent the parties mutually agree in writing that an individual may have access to “Restricted—Attorneys’ Eyes Only” information.

6. Disclosure of “Restricted—Attorneys’ Eyes Only” information:
- (a) Notwithstanding any other provision of this Protective Order, information designated “Restricted—Attorneys’ Eyes Only” may not be disclosed to any individual involved in the prosecution of patent applications related to the subject matter of the claimed invention involved in this litigation.
 - (b) Individuals to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order, may, however, provide copies of material prior art or other non-confidential information to counsel involved in prosecution to be provided to the United States Patent and Trademark Office.
 - (c) Unless otherwise agreed upon by the parties, no individual to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order may be involved in the prosecution of patent applications related to the subject matter of the claimed invention involved in this litigation until one (1) year after the final disposition of this action, including all related appeals (the “Prosecution Bar”).
 - (1) The parties expressly agree that the Prosecution Bar set forth herein will be personal to any attorney who reviews information designated “Restricted—Attorneys’ Eyes Only” and will not be imputed to any other persons or attorneys at the attorney’s law firm or company, unless information concerning that designated information was communicated to an individual by one who reviewed such designated information.
 - (2) For purposes of the Prosecution Bar, “prosecution” includes:
 - (i) the drafting or amending of patent claims, or the supervising of the drafting or amending of patent claims;
 - (ii) participating in or advising on any re-examination, reissue, inter-party review, or other post-grant review proceeding, except as specified below; and
 - (iii) advising any client concerning strategies for obtaining or preserving patent rights related to the subject matter of the claimed invention involved in this litigation before the United States Patent and Trademark Office or other similar foreign government or agency.
 - (3) “Prosecution” does not include participating in or advising on any re-examination, reissue, inter-party review, or other post-grant review proceeding by a party’s lawyers, with respect to any patents in which an opposing party involved in this litigation has any interest or any patent involved in the pending action.
 - (d) Nothing contained herein will preclude lawyers having access to documents designated as “Restricted—Attorneys’ Eyes Only” from having discussions with their clients about the general status of the case and about settlement offers, so long as during any discussions the lawyers do not impart any “Restricted—Attorneys’ Eyes Only” information to their clients.

7. Third parties producing documents in the course of this litigation also may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” subject to the same protections and constraints as the parties to the litigation. A copy of this Protective Order will be served together with any subpoena served in this litigation. All documents produced by such third parties, even if not designated by the third parties as “Restricted” or “Restricted—Attorneys’ Eyes Only,” will be treated by the parties to this action as “Restricted—Attorneys’ Eyes Only” for a period of fifteen (15) days from the date of production.

During that fifteen (15)-day period, any party may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” pursuant to the terms of this Protective Order.

8. Each person who is to receive “Restricted” information, pursuant to Paragraphs 4(e), (f), or (g), must execute a “Written Assurance” found at Appendix of Forms, Form 9A. Opposing counsel must be notified in writing at least ten (10) days prior to disclosure of “Restricted” information to any such person. Such notice must provide a reasonable description of the person to whom disclosure is sought sufficient to permit an objection to be made. Upon good cause (which does not include challenging the qualifications of such outside person), a party may object in writing to disclosure within ten (10) days after receipt of notice by setting forth in detail the grounds on which the party’s objection is based. If a party timely objects, no disclosure will be made until the party seeking disclosure obtains the prior approval of the court or the objecting party.

9. All depositions or portions of depositions taken in this litigation that contain information that may be designated “Restricted” or “Restricted—Attorneys’ Eyes Only,” according to Paragraphs 2 and 5, may also be so designated and thereby obtain the protections accorded other “Restricted” or “Restricted—Attorneys’ Eyes Only” documents. Designations for depositions must be made either on the record or by written notice to the other party within ten (10) days of receipt of the final transcript. Unless otherwise agreed, depositions must be treated as “Restricted—Attorneys’ Eyes Only” until ten (10) days after receipt of the final transcript. The deposition of any witness (or any portion of such deposition) that includes “Restricted” information may be taken only in the presence of persons qualified to have access to such information.

10. Any party who fails to designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” may designate the documents after production, to the same extent as it may have designated the documents before production, by providing written notice of the error and substituting copies of the documents bearing appropriate designations. The party receiving the designation must, upon receiving the replacement set of documents, immediately return or destroy the documents that lacked the designation to the designating party, and the parties must undertake reasonable efforts to correct any disclosure of such information, contrary to the designation. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

11. In addition to the requirements imposed by Federal Rule of Evidence 502 and RCFC 26(b)(5)(B), any party who inadvertently discloses documents that are privileged or otherwise immune from discovery must, promptly upon discovery of the error, advise the receiving party in writing and request that the documents be returned. The receiving party must return or certify destruction of the documents, including all copies, within ten (10) days of receiving such written request. The party returning or destroying such documents may thereafter seek reproduction of any such documents, pursuant to applicable law, although the party seeking reproduction may not use the fact that the documents were previously produced inadvertently to argue that privilege or any other immunity from discovery has been waived. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

12. If a party intends to file a document containing “Restricted” information with the court, this Protective Order grants leave to make such filing under seal. Prior to the disclosure at trial or a hearing of any information designated “Restricted” or “Restricted—Attorneys’ Eyes Only,” the parties may seek further protections against public disclosure from the court.

13. Any party may request a change in the designation of any information designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Any such document will be treated as designated until such request is approved by the court. If the disclosing party does not agree to the requested change in designation, the party seeking the change may move the court for appropriate relief, providing notice to any third party whose designation of produced documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” in the

litigation may be affected. The party asserting designation will have the burden of proving that the information in question is within the scope of protection afforded by this Protective Order and RCFC 26(c).

14. No later than sixty (60) days after the termination of this litigation, including all related appeals, each party must either destroy or return to the disclosing party all documents designated by the disclosing party as “Restricted” or “Restricted—Attorneys’ Eyes Only,” and all copies of and/or extracts or data taken from such documents. Each party must provide a certification in writing to the disclosing party as to such return or destruction within the sixty (60)-day period. Attorneys will be entitled, however, to retain one set of all documents filed with the court, obtained during discovery, or generated as correspondence in connection with the action, including one copy of documents designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Nothing in this Protective Order will require deletion of data from tapes or other storage maintained solely for the purpose of permitting the rebuilding or recovery of files, provided that access to this data is restricted to those otherwise permitted access under this Protective Order.

15. Any party may move the court for a modification of this Protective Order and nothing in this Protective Order will be construed to prevent a party from seeking such further provisions enhancing or limiting access to documents as may be appropriate.

16. The obligations imposed by this Protective Order will survive the termination of this litigation and all related appeals and will remain in effect until the party designating the documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” agrees otherwise in writing or a further court order otherwise directs.

17. No later than sixty (60) days after the termination of this litigation, including all related appeals, the parties must file a motion with the court seeking leave to remove any physical materials designated “Restricted” or “Restricted—Attorneys’ Eyes Only” from the office or custody of the clerk.

18. Nothing in this Protective Order will be construed to prevent any party from disclosing its own “Restricted” or “Restricted—Attorneys’ Eyes Only” information in any manner that it considers appropriate.

19. In the event that any party seeks the production of documents containing material that may be classified, subject to International Traffic in Arms Regulations or other export controls, or otherwise restricted by federal law, the parties will confer regarding an appropriate resolution consistent with federal law. Notwithstanding anything contained in this Protective Order, National Security Information will be controlled according to applicable statute.

20. The court reserves the right, after reviewing the record and other information submitted by the parties, to modify this Protective Order, or the parties’ designation of materials or proceedings as “Restricted” or “Restricted—Attorneys’ Eyes Only,” in the event such materials or proceedings are not properly classified as confidential, privileged, proprietary, competition-sensitive, or otherwise protectable.

IT IS SO ORDERED.

[Name of Judge]
Judge

FORM 9A
WRITTEN ASSURANCE

United States Court of Federal Claims

_____,)
)
Plaintiff,) No. _____)
) Judge _____)
v.)
)
THE UNITED STATES,)
)
Defendant.)

WRITTEN ASSURANCE

I, _____, declare that:

1. My address is _____,
and the address of my present employer is _____.
2. My present occupation or job description is _____
_____.
3. My present relationship to plaintiff/defendant(s) is _____
_____.
4. I have received a copy of the Protective Order in this action.
5. I have carefully read and understand the provisions of the Protective Order, agree to be bound by it, and specifically agree I will not use or disclose to anyone any of the contents of any Restricted information received under the protection of the Protective Order.
6. I understand that I am to retain all copies of any of the materials that I receive which have been so designated as Restricted in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned or legal duties. I will destroy or return to counsel all Restricted documents and things that come into my possession. I acknowledge that such return or the subsequent destruction of such

materials will not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

I declare under penalty of perjury under the laws of the state where executed that the foregoing is true and correct.

Executed this _____ day of _____, 20____, in the State of _____.

[Name of Judge]
Judge

DRAFT