

# Model E-Discovery Order for Patent Cases Adopted by the Federal Circuit Advisory Counsel

December 21, 2011

The Federal Circuit Advisory Council, led by Federal Circuit Chief Judge Rader, has drafted and adopted a [Model Order](#) to govern e-discovery in patent cases. This Model Order proposes highly limited exchanges of e-discovery. The Model Order has been implemented in the Northern District of California, and several judges in the Eastern District of Texas have used closely similar orders. The Council is composed, inter alia, of judges of patent litigation-heavy districts, and is likely to be influential.

The Model Order includes a number of limits on the discovery of ESI, particularly the discovery of email and metadata. Notably, requests for emails are to be limited to five search terms for five email custodians.

The Model Order also includes cost shifting for disproportionate ESI production requests. Likewise, a party's nonresponsive or dilatory discovery tactics are to be cost-shifting considerations.

More information on this Model Order can be found on the [US Court of Appeals for the Federal Circuit](#) website.

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