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A. SCOPE OF RULES

100 Title.

These rules are entitled Supplemental Patent Rules and may be cited as "Local Patent Rules."

101 Scope and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. These rules are designed to streamline the pre-trial and claim construction process, and generally to reduce the cost of patent litigation. The rules set forth a schedule for claim construction, including contentions, disclosures and briefing. The deadlines through the Claim Construction Hearing for an infringement action are illustrated in Appendix 1 attached hereto. The Court may eliminate or modify the obligations and deadlines set forth in these Local Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. The Civil Local Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Local Patent Rules.

102 Effective Date.

These Local Patent Rules shall take effect on **[date]** and shall apply to any case filed thereafter and to any pending case in which the Rule 26(f) discovery conference has not yet taken place.

B. GENERAL PROVISIONS

110 Joint Status Report.

When the parties confer with each other pursuant to Fed. R. Civ. P. 26(f) and CR 16(a), in addition to the matters covered by Fed. R. Civ. P. 26, the parties shall discuss and address in the Joint Status Report the following topics:

(1) Whether changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) Whether changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed;

(4) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c);

(5) Any proposed modification of the deadlines provided for in these Local Patent Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(6) Whether confidentiality concerns affect the disclosures contemplated in these rules and, if so, the parties' position on how they should be addressed;

(7) Whether and/or when a tutorial might be scheduled to assist the Court to understand the underlying technology;

(8) Whether discovery should be allowed before the disclosures required by Patent Local Rule 120;

(9) Whether any party plans to bring a motion for preliminary injunction or a dispositive motion before the Claim Construction Hearing and, if so, the nature of such motion;

(10) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;

(11) Whether the Court should appoint an expert to hear and make recommendations on claim construction issues;

(12) The nature of the Claims Construction Hearing (e.g., an evidentiary hearing);

(13) Proposed deadlines for discovery, dispositive motions, mediation, and trial dates; and

(14) Whether the Court should hold a Scheduling Conference to address the issues raised in the Joint Status Report.

111 Confidentiality.

To the extent a party claims that documents or information to be produced under these Local Patent Rules are confidential, the parties shall negotiate, in good faith, an agreement to protect the confidentiality of such documents or information and/or the form of an order to accomplish such protection. Any proposed protective order will be governed in all respects by Federal Rule of Civil Procedure 26 and Local Rule 5(g).

To the extent the parties cannot reach an agreement and the Court has not entered a protective order, any document or information produced under these Patent Local Rules deemed confidential by the producing party shall be marked "confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the

disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

This confidentiality restriction shall apply only between the parties, and does not entitle such documents or information to be filed under seal without leave of Court.

112 Discovery Regarding Contentions.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question), or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Local Patent Rules. A party may object, however, to disclosing under Fed. R. Civ. P. 26(a)(1) or responding to discovery requests seeking the following categories of information on the ground that they are premature in light of the timetable provided in the Local Patent Rules:

(a) Requests seeking to elicit a party's claim construction position;

(b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

Where a party properly objects to a discovery request or disclosure obligation on the ground set forth above, the requesting party may file a motion to compel to resolve the objection. If no motion is filed or the court upholds the objection, the producing party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Local Patent Rules, unless there exists another legitimate ground for objection.

C. PATENT INITIAL DISCLOSURES

120 Disclosure of Asserted Claims and Infringement Contentions.

Within 15 days of the Scheduling Conference or, if there is no Scheduling Conference, entry of the case schedule, a party claiming patent infringement shall serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." The "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(a) Each claim ("Asserted Claim") of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 217 asserted;

(b) For each Asserted Claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Device") of each opposing party. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where each element of each Asserted Claim is found within each Accused Device, including for each claim element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Device that performs the claimed function;

(d) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

(e) Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Device; and

(f) For any patent that claims the priority of an earlier application, the priority date to which each asserted claim allegedly is entitled.

121 Non-Infringement and Invalidity Contentions.

Not later than 30 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Non-Infringement and Invalidity Contentions" which shall contain the following information:

(a) For each Asserted Claim against that party, a chart stating whether the party admits that that element is present in the Accused Device or contends that it is absent from the Accused Device. If the party contends that an element is absent from the Accused Device, it shall set forth in detail the basis for that contention.

(b) Each item of prior art that allegedly anticipates each Asserted Claim or renders it obvious. Prior art patents shall be identified by number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and where feasible, author and publisher. Public uses or sales shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was

made known. A claim that the invention was derived from a third party shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. A claim of prior inventorship shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(c) Whether each item of prior art anticipates each Asserted Claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination must be identified; and

(d) A chart identifying where specifically in each alleged item of prior art each element of each Asserted Claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function.

122 Document Production Accompanying Invalidity Contentions.

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying a copy of each item of prior art identified pursuant to Local Patent Rule 121(b) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an accurate English translation of the portion(s) relied upon must be produced.

123 Disclosure Requirement in Patent Cases for Declaratory Judgment.

(a) In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is invalid, Local Patent Rule 120 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement, no later than 10 days after the defendant serves its answer, or 10 days after the Scheduling Conference, whichever is later, the party seeking a declaratory judgment must serve upon each opposing party its Preliminary Invalidity Contentions that conform to Local Patent Rule 121 and produce or make available for inspection and copying the documents described in Local Patent Rule 122.

(b) Inapplicability of Rule. This Patent L.R. 123 shall not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

124 Amended Contentions.

Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include: (a) a claim construction by the Court different from that proposed by the party seeking amendment; (b) recent discovery of material prior art despite earlier diligent search; and (c) recent discovery of nonpublic information about the Accused Device which was

not discovered, despite diligent efforts, before the service of the Infringement Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

125 Filing of Contentions.

The contentions referred to above should not be filed with the Court unless they are the subject of a motion, in which case they may be attached as appropriate to the motion papers as necessary.

D. CLAIM CONSTRUCTION PROCEEDINGS

130 Exchange of Proposed Terms and Claim Elements for Construction.

(a) Within 20 days of service of the contentions needed to be served pursuant to Local Patent Rule 121, each party shall serve on the other a list of claim terms, phrases, or clauses which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

(b) The parties shall thereafter meet and confer, by telephone or in person, for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

131 Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) Not later than 30 days after the exchange of "Proposed Terms and Claim Elements for Construction" pursuant to Local Patent Rule 130, each party shall serve proposed constructions of each claim term, phrase, or clause that the parties have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element that any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including, without limitation, dictionary definitions, treatises, prior art, and testimony of percipient and expert witnesses, that they contend support their respective claim constructions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties shall also provide a brief description of the substance of that witness's proposed testimony.

(c) The parties shall thereafter meet and confer, by telephone or in person, for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

132 Joint Claim Construction and Prehearing Statement.

Not later than 45 days after service of the "Preliminary Claim Constructions," the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(a) The construction of those claim terms, phrases, or clauses on which the parties agree;

(b) Each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim in the format of the Sample Joint Claim Chart in Appendix 2 to these Local Patent Rules;

(c) The ten most important disputed claim terms. If the parties cannot agree on such terms, then they shall set forth the disputed terms upon which they agree, and each party shall identify any additional terms it believes should be construed, with a brief explanation as to why it believes the construction of such terms are important. The Court will construe a maximum of ten claim terms at the initial Markman hearing, unless the Court determines otherwise. Prioritization should be guided by the twin goals of narrowing the issues and choosing the ten claim terms for which a claim construction would be most productive in terms of setting the groundwork for possible settlement.

(d) The anticipated length of time necessary for the Claim Construction Hearing;

(e) The proposed order of presentation at the Claim Construction Hearing;

(f) The parties' position on whether, why, and the extent to which the Court should consider live testimony at the Claim Construction Hearing, including the identity of any witnesses a party proposes to call, and for each expert, the disclosure required by Fed. R. Civ. P. 26(a)(2)(B) as to opinions to be offered at the Claim Construction Hearing;

(g) The parties' position as to whether there should be a tutorial on the subject matter of the patent(s) at issue and, if so, the timing of such a tutorial;

(h) Whether a pre-hearing conference, prior to the Claim Construction Hearing, is necessary and, if so, the proposed subjects to be addressed and proposed dates for such conference; and

(i) Whether the parties believe the Court should appoint an independent expert.

133 Completion of Claim Construction Discovery.

Not later than 50 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall 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 and Prehearing Statement.

134 Claim Construction Briefs.

(a) Not later than 55 days after serving and filing the Joint Claim Construction and Prehearing Statement, each shall serve and file an opening brief and any evidence supporting its claim construction.

(b) The cover page of an opening brief shall note, under the title, "Due Date: [Date]," where the date shall be the date that the responsive brief is due. No reply briefs shall be filed unless otherwise ordered by the Court.

(c) Not later than 15 days after service of an opening brief, each party shall serve and file a responsive brief.

(d) Opening briefs shall be limited to 24 pages per side, and responsive briefs shall be limited to 12 pages per side, unless the parties receive permission prior to the due date to file over-length briefs.

135 Claim Construction Hearing.

Subject to the convenience of the Court's calendar, the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue. Any claim construction hearing shall be limited to ten claim terms, unless the Court rules otherwise.

E. WILLFULNESS

140 Willfulness.

Not later than 30 days after service by the Court of its Claim Construction Ruling, each party opposing a claim of patent infringement that will rely on an opinion of counsel as part of a defense to a claim of willful infringement shall:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

(b) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s)

which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of this Local Patent Rule 140 shall not be permitted to rely on an opinion of counsel as part of a defense to willful infringement absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

Schedule Under Draft Local Patent Rules

Event	Days After Scheduling Conference	Rule
Scheduling Conference	0	
Disclosure of Asserted Claims	15	120
Non-infringement and Invalidity Contentions	45	121
Proposed Terms for Construction	65	130(a)
Preliminary Claim Construction	95	131(a)
Joint Claim Construction	140	132(a)
Construction Expert Disclosures	140	132(f)
Completion of Claim Construction Discovery	190	133
Opening Claim Construction Brief	195	134(a)
Responsive Claim Construction Brief	210	134(c)
Claim Construction Hearing	Per Court Order	135

APPENDIX 1

Sample Joint Claim Chart

Claim Language (Disputed Terms in **Bold**) '123 Patent	Plaintiff's Proposed Construction and Evidence in Support	Defendant's Proposed Construction and Evidence in Support
1. A method for mending **fences** [or] **fences** Found in claim numbers: '123 Patent: y, z '456 Patent: a, b	**fence** Proposed Construction: A structure that keeps things out. Intrinsic Evidence: '123 Patent col _:__ ("keeps stray animals out"); Prosecution History at __ ("this method is more effective than the prior art in reinforcing the fence, and therefore in keeping out unwanted intruders"). Dictionary/Treatise Definitions: Merriam-Webster Dictionary ("a barrier intended to prevent . . . intrusion"). Extrinsic Evidence: R. Frost Depo. at xx:xx ("Good fences make good neighbors"); '000 Patent at col _:__; Vila Decl. at ¶__.	**fence** Proposed Construction: A structure that keeps things in. Intrinsic Evidence: '123 Patent col _:__ ("keeps young children from leaving the yard "); Prosecution History at __ ("dilapidated fences meant to pen in cattle are particularly amenable to this method"). Dictionary/Treatise Definitions: Merriam-Webster Dictionary ("a barrier intended to prevent . . . intrusion"). Extrinsic Evidence: C. Porter Depo. at xx:xx ("Don't fence me in"); '111 Patent at col _:__; Thomas Decl. at ¶__.

APPENDIX 2