

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUDGE TANA LIN
STANDING ORDER FOR PATENT CASES

This Order sets forth the procedures that govern patent cases assigned to this Court. This Order applies to all Counsel in cases before this Court, their clients, and any party representing themselves *pro se*. When the term “Counsel” is used in this Order, it includes lawyers as well as any party representing themselves. When the terms “Party” or “Parties” are used in this Order, it includes Counsel.

These procedures supplement the Federal Rules of Civil Procedure (“FRCP”), Local Civil Rules (“LCR”), and Local Patent Rules (“LPR”) of the United States District Court for the Western District of Washington, as well Judge Lin’s standard procedures for all civil cases. **In the event there is an inconsistency between this Order and the Local Rules or the Federal Rules of Civil Procedure, the terms of this Order control. *Failure to comply with the procedures set forth in this Order may result in sanctions.*** The terms of this Order shall have the force and effect of orders of the Court from the date of the Order. If the case was previously assigned to a different District Judge, these procedures replace those that previously controlled, but only as to filings and hearings from the date of reassignment.

Parties shall review Judge Lin’s procedures at <https://www.wawd.uscourts.gov/judges/lin-procedures> prior to any hearing, trial, or motion filing for information relating to her general practices and potential updates to this Order.

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I. ASSERTED CLAIMS AND PRELIMINARY INFRINGEMENT CONTENTIONS

A Party claiming patent infringement will serve on all Parties a statement of the Asserted Claims and Preliminary Infringement Contentions pursuant to LPR 120. In cases where a Party proposes to assert a substantial number of claims, the Court recommends that the Parties discuss limiting the number of asserted claims to a representative sample to avoid asserting duplicative claims. The Court will not presumptively limit the number of claims that a Party may assert, though the Court may choose to construe a limited number of claims, as detailed further below in Section IV. However, the Parties should be aware that the Court “has inherent authority to reasonably limit both the number of claim terms to be construed and the number of patent claims the parties may assert.” *See Masimo Corp. v. Philips Elecs. N. Am. Corp.*, 918 F. Supp. 2d 277, 282 & n.29 (D. Del. 2013) (collecting cases); *see also In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1309, 1311–13 (Fed. Cir. 2011).

II. EXPERT REPORTS

If the Parties wish to present expert testimony at the claim construction hearing (a.k.a., a “*Markman* hearing”), the Parties will disclose expert reports related to claim construction by the date established in the scheduling order. Rebuttal expert reports will be exchanged within the following **thirty (30) days**. These dates do not affect any other expert report deadlines included in the scheduling order.

III. PROPOSED TERMS AND CLAIM ELEMENTS FOR THE PRELIMINARY CLAIM CHART

Prior to the formulation of the preliminary claim chart, the Parties will exchange a list of Proposed Terms and Claim Elements, which will include each claim term, phrase, or clause that each Party contends the Court should construe for claim construction purposes, pursuant to LPR 131. Each Party will also identify any claim element that it contends should be governed by 35 U.S.C. § 112(6) as a means-plus-function element. The Parties will then meet to identify terms in

genuine dispute and facilitate the preparation of the Joint Claim Chart (see Sections IV and V below).

The Parties will then exchange preliminary claim charts, which will contain preliminary proposed constructions for each disputed claim term that the Parties have each identified. Each Party will also provide preliminary identification of any extrinsic evidence, along with a copy of it, as well as a brief description of any witness's proposed testimony that supports its construction of the claim. The Parties will then meet to narrow the issues and finalize the Joint Claim Chart and Prehearing Statement.

IV. JOINT CLAIM CHART AND PREHEARING STATEMENT

All allegations of infringement and invalidity will be filed with the Court in the form of a Joint Claim Chart and Prehearing Statement. After that time, the Court will not consider new allegations of infringement or invalidity without good cause.

A Party claiming patent infringement must provide a list of all allegedly infringed claims in the Prehearing Statement. If more than one allegedly infringing product or process is at issue, the Party shall identify which product(s) or process(es) infringe which claims. A Party claiming invalidity of a patent or patent claims must provide a list of all claims that are allegedly invalid and must briefly state the basis of each invalidity argument (*e.g.*, obviousness, anticipation, lack of written description, etc.). Where an invalidity argument is based on prior art, the Party shall briefly identify the prior art reference(s).

The Joint Claim Chart must be in the format provided in the Sample Joint Claim Chart found in the next Section. This Chart will include each Party's proposed construction of disputed terms, together with specific references to the relevant portions of the specification and the prosecution history, and descriptions of the extrinsic evidence to be used. The Parties will attach to the Joint Claim Chart a Joint Appendix ("Claim Chart Appendix") with copies of all patents in dispute, together with the relevant prosecution history. These documents shall not be resubmitted upon briefing. The Parties will have the complete prosecution history available at the Court's request.

The Parties shall indicate whether any witnesses are to be called at the claim construction hearing, and if so, their identities. For expert witnesses, the Party calling the expert will provide a summary of the opinion to be offered.

The Court expects the terms to be truly in dispute, and further expects that the preparation of the Joint Claim Chart and Prehearing Statement will narrow the terms in dispute. A Party may not propose a construction when the other Party is unable to respond without leave of Court (*e.g.*, in a response brief). If a Party must propose a new construction, the Joint Claim Chart must be amended to reflect that change. At the time of the *Markman* hearing, the Joint Claim Chart before the Court must reflect the most up-to-date proposed constructions.

Unless the Parties obtain leave of the Court in advance, the Court will construe a maximum of **ten (10) claim terms** at the claim construction hearing. Claim construction briefs should therefore be limited to **ten (10) terms** that the Parties choose jointly, absent prior leave of Court. The Parties should prioritize claims by keeping in mind the twin goals of (1) narrowing the

issues and (2) choosing the **ten (10) claim terms** for which a claim construction would be most productive to set the groundwork for possible resolution of the case.

V. SAMPLE JOINT CLAIM CHART

A. For agreed-upon constructions:

Claim Term	Joint Proposed Construction
“Agreed-upon term” (list asserted claim(s) by patent in which the term appears: ‘XXX Patent, claims 1, 2 & 81,’ ‘YYY Patent, claim 7’)	“Agreed-upon construction”

B. For disputed constructions:

Claim Language (Disputed Terms in Bold)	Plaintiff’s Proposed Construction and Evidence in Support	Defendant’s Proposed Construction and Evidence in Support
‘123 Patent 1. A method for mending fences [or] fences Found in claim numbers: ‘123 Patent: y, z ‘456 Patent: a, b	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things out.</p> <p><u>Dictionary/Treatise Definitions:</u> Merriam-Webster Dictionary (“a barrier intended to prevent . . . intrusion”).</p> <p><u>Intrinsic Evidence:</u> ‘123 Patent col __: __ (“keeps stray animals out”); Prosecution History at __ (“this method is more effective than the prior art in reinforcing the</p>	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things in.</p> <p><u>Dictionary/Treatise Definitions:</u> Random House Dictionary (“a barrier enclosing or bordering a field, yard, etc.”).</p> <p><u>Intrinsic Evidence:</u> ‘123 Patent col __: __ (“keeps young children from leaving the yard “); Prosecution History at __ (“dilapidated fences meant</p>

	<p>fence, and therefore in keeping out unwanted intruders”).</p> <p><u>Extrinsic Evidence:</u> R. Frost Depo. at xx:xx (“Good fences make good neighbors”); ‘000 Patent at col _:__; Vila Decl. at ¶__.</p>	<p>to pen in cattle are particularly amenable to this method”).</p> <p><u>Extrinsic Evidence:</u> C. Porter Depo. at xx:xx (“Don’t fence me in”); ‘111 Patent at col _:__; Thomas Decl. at ¶__.</p>
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(or similar format that provides side-by-side comparison)

VI. CLAIM CONSTRUCTION BRIEFS

Absent a court order to the contrary, claim construction briefing shall proceed in the following manner and order: (1) Plaintiff shall serve, but not file, an opening brief, not to exceed **twenty-four (24) pages**; (2) Defendant shall serve, but not file, its answering brief, not to exceed **twenty-four (24) pages**; (3) Plaintiff shall serve, but not file, its reply brief, not to exceed **twelve (12) pages**; (4) Defendant shall serve, but not file, its sur-reply brief, not to exceed **twelve (12) pages**; and (5) the Parties shall file a Joint Claim Construction Brief. The Parties shall copy and paste their served briefing into one brief, with their positions on each claim term in sequential order, in substantially the form below:

JOINT CLAIM CONSTRUCTION BRIEF

- I. Agreed-Upon Constructions
[TERMS]
- II. Disputed Constructions
[TERM 1]
 - 1. Plaintiff’s Opening Position
 - 2. Defendant’s Answering Position
 - 3. Plaintiff’s Reply Position
 - 4. Defendant’s Sur-Reply Position
[TERM 2]
 - 1. Plaintiff’s Opening Position
 - 2. Defendant’s Answering Position
 - 3. Plaintiff’s Reply Position
 - 4. Defendant’s Sur-Reply Position

If the joint brief as submitted is more than **seventy-two (72) pages**, the Parties must certify that the page limits (or equivalent word counts) in the scheduling order have been complied with and

provide a brief explanation (*e.g.*, formatting issues, listing of agreed-upon terms) as to why the brief is longer than **seventy-two (72) pages**.

To the extent the Parties wish to submit materials supporting their position, the Parties shall submit them in a Joint Appendix (“Construction Brief Appendix”). However, to the extent any intrinsic evidence (including copies of the patent(s) at issue) was previously provided in the Claim Chart Appendix, any such evidence shall *not* be repeated in the Construction Brief Appendix. Instead, the Parties shall cite to the Claim Chart Appendix for such materials.

VII. TUTORIAL AND/OR COURT-APPOINTED NEUTRAL EXPERT

The Court or the Parties can request that the Court have a tutorial on the subject matter of the patent(s) at issue prior to the *Markman* hearing. In those instances, the Court will schedule a tutorial to occur **two (2) to four (4) weeks** prior to the *Markman* hearing. The Parties, in consultation with the Court, will jointly agree to the format of the tutorial, including a summary and explanation of the subject matter at issue. The length of the tutorial will depend upon the subject matter. Visual aids and suggestions for reading materials of a reasonable volume are encouraged. *See, e.g.*, <https://www.txwd.uscourts.gov/judges-information/exemplary-tutorials/>.


Alternatively, depending on the technology involved, the Court may determine that the assistance of a neutral expert would be helpful. In such an instance, the Court may direct the Parties to confer and, if possible, reach an agreement as to **three (3) experts** in the field that would be appropriate to act as a neutral expert to assist the Court during the claim construction proceedings and/or the trial of this matter. The Court will then choose one to appoint as a neutral expert pursuant to Federal Rule of Evidence 706. In such a situation, the Parties will split the cost of the expert equally.

VIII. CLAIM CONSTRUCTION HEARING

The claim construction hearing will ordinarily be set for **one (1) full trial day (5 hours)**. If more or less time is required, the Parties are instructed to inform Kadya Peter, Courtroom Deputy, at kadya_peter@wawd.uscourts.gov, with as much advance notice as possible.

The Parties are directed to address any specific concerns with the foregoing schedule in their joint status report. Pursuant to Federal Rule of Civil Procedure 16, a schedule set forth in accordance with this order may only be modified upon a showing of good cause.

Dated this 2nd day of January 2024.



Tana Lin
United States District Judge