

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

XYZ CORPORATION,

Plaintiff(s),

v.

ABC CORPORATION,

Defendant(s).

CASE NO.

STANDING ORDER
FOR PATENT CASES

The following Order applies to all patent infringement cases assigned to Judge Richard A. Jones.

Unless another time schedule is necessitated by information provided in the Joint Status Report (“JSR”), a Claim Construction Hearing (“Hearing”) will be held approximately 180 days (6 months) from the time of issuance of the Court’s Order Setting Trial Date and Related Dates (the “Scheduling Order”). The Scheduling Order will establish deadlines for the standard actions as set forth and explained in detail below.

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1 The following time frame will apply unless a party shows good cause why it
2 should not:

Event	Days After Scheduling Order	Patent Rule
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	To be set by the Court	135

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18 PLEASE NOTE: The Court will not rule on dispositive motions that raise
19 issues of claim construction prior to the Hearing, unless special circumstances
20 warrant and leave of Court is obtained in advance of filing.

21 **Asserted Claims and Preliminary Infringement Contentions**

22 A party claiming patent infringement will serve on all parties a statement of
23 the Asserted Claims and Preliminary Infringement Contentions, which will include
24 the following information: (1) the identity of each claim of each patent alleged to be
25 infringed; (2) the identity of the opposing party's accused device/method/etc. by
26 specific name/model number/etc. for each claim asserted; (3) a chart that identifies
specifically where each element of each asserted claim is found within each accused

1 device/method/etc.; (4) whether each element is literally or equivalently infringed;
2 and (5) the priority date to which each asserted claim allegedly is entitled, if priority
3 is an issue.

4 In cases where a party proposes to assert a substantial number of claims, the
5 Court recommends that the parties discuss limiting the number of asserted claims to
6 a representative sample so as to avoid asserting duplicative claims. The Court will
7 not presumptively limit the number of claims that a party may assert. However, the
8 parties should be aware that the Court “has inherent authority to reasonably limit
9 both the number of claim terms to be construed and the number of patent claims the
10 parties may assert.” *See Masimo Corp. v. Philips Elecs. N. Am. Corp.*, 918 F. Supp.
11 2d 277, 282 (D. Del. 2013) (collecting cases); *see also In re Katz Interactive Call*
12 *Processing Patent Litig.*, 639 F.3d 1303, 1309, 1311-13 (Fed. Cir. 2011).

13 **Preliminary Invalidity Contentions**

14 A party opposing a claim of infringement on the basis of invalidity shall serve
15 on all parties a statement of its Preliminary Invalidity Contentions including: (1) the
16 identity of prior art that allegedly anticipates each asserted claim or renders it
17 obvious; (2) whether each piece of prior art anticipates or renders obvious the
18 asserted claims; (3) a chart that identifies where in each piece of prior art each
19 element of each asserted claim is found; and (4) any grounds for invalidity based on
20 indefiniteness, enablement, or written description under 35 U.S.C. § 112.

21 **Expert Reports**

22 If the parties wish to present expert testimony at the claim construction
23 hearing, the parties will disclose expert reports related to claim construction by the
24 date established in the Scheduling Order. Rebuttal expert reports will be exchanged
25 30 days later. These dates do not affect the more general expert report deadlines
26 included in the Scheduling Order.

1 **Proposed Terms and Claim Elements and Preliminary Claim Chart**

2 At some point prior to the formulation of the preliminary claim chart, the
3 parties will exchange a list of Proposed Terms and Claim Elements, which will
4 include each term that each party contends the Court should construe. Each party
5 will also identify any claim element that it contends should be governed by 35
6 U.S.C. § 112(6) as a means-plus-function element. The parties will then meet to
7 identify terms in genuine dispute and facilitate the preparation of the Joint Claim
8 Chart.

9 The parties will then exchange preliminary proposed constructions for each
10 disputed claim term that the parties have collectively identified. Each party will also
11 provide preliminary identification of any extrinsic evidence, along with a copy of it,
12 as well as a brief description of any witness’ proposed testimony that supports its
13 construction of the claim. The parties will then meet to narrow the issues and
14 finalize the Joint Claim Chart and Prehearing Statement.

15 **Joint Claim Chart and Prehearing Statement**

16 All allegations of infringement and invalidity will be filed with the Court in
17 the form of a Prehearing Statement. After that time, the Court will not consider new
18 allegations of infringement or invalidity without the asserting party showing good
19 cause. A Joint Claim Chart will also be filed, in the format provided in the Sample
20 Joint Claim Chart found at the end of this Order. This Chart will include each party’s
21 proposed construction of disputed terms, together with specific references to the
22 relevant portions of the specification and the prosecution history, and descriptions of
23 the extrinsic evidence used. The parties will attach to the Joint Claim Chart copies of
24 all patents in dispute, together with the relevant prosecution history. These
25 documents need not be resubmitted upon briefing. The parties will have the
26 complete prosecution history available at the Court’s request. In addition, the parties
will indicate whether any witnesses are to be called, and if so, their identities. For

1 expert witnesses, the party calling the expert will provide a summary of the opinion
2 to be offered.

3 As part of their Joint or Individual Prehearing Statement, each party must
4 prepare a statement for each contested claim briefly describing how each competing
5 construction may affect the merits of the case. For example, the parties may indicate
6 if a particular claim construction will affect summary judgment. The purpose of this
7 statement is to ensure that the Court construes only terms that are actually in dispute.
8 *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)
9 (citing *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997))
10 (“only those terms need be construed that are in controversy, and only to the extent
11 necessary to resolve the controversy.”).

12 The Court expects the terms to be truly in dispute, and further expects that the
13 preparation of the Preliminary and Joint Claim Charts will narrow the terms in
14 dispute. A party is not allowed to propose a construction when the other party is
15 unable to respond without leave of court (e.g., in a Response Brief). If a party must
16 propose a new construction, the Joint Claim Chart must be amended to reflect that
17 change. At the time of the Hearing, the Joint Claim Chart before the Court must
18 reflect the current proposed constructions.

19 The parties should note that the Court will construe a maximum of 10 claim
20 terms at the initial Hearing. Prioritization should be guided by the twin goals of
21 narrowing the issues and choosing the 10 claim terms for which a claim construction
22 would be most productive in terms of setting the groundwork for possible
23 settlement.

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**Tutorial and/or Court-Appointed Neutral Expert
and Claim Construction Hearing**

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 Hearing. In those instances, the
Court will schedule a tutorial to occur two to four weeks prior to the Hearing. The

1 parties, in consultation with the Court, will jointly agree to the format of the tutorial,
2 including a summary and explanation of the subject matter at issue. The length of
3 the tutorial will depend upon the subject matter. Visual aids and suggestions for
4 reading materials are encouraged.

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

13 The claim construction hearing will be set for one full trial day (5 hours). If
14 more or less time is required, the parties are instructed to inform Victoria Ericksen,
15 Courtroom Deputy, at 206-370-8517.

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

20 DATED this _____ day of _____, 20 ____.

21 _____
22 HON. RICHARD A. JONES
23 United States District Judge
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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
<p>1. A method for mending fences</p> <p>[or]</p> <p>fences</p> <p>Found in claim numbers:</p> <p>'123 Patent: y,z '456 Patent: a,b</p>	<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 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>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things out.</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 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>

(or similar format that provides side-by-side comparison)