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STANDING ORDER - PATENT
Senior U.S. District Judge Sandra Brown Armstrong
Effective October 1, 2018

In addition to the Standing Order for Civil Cases, the following shall apply in all patent cases assigned to Judge Armstrong. In addition to the Federal Rules of Civil Procedure, the Civil Local Rules, and the General Orders of the Northern District of California, the parties shall follow the Patent Local Rules, except as superseded by these Standing Orders.

1. Claim Construction

- a. As an initial matter, the Court will construe *no more than ten terms*. If more terms are at issue, the parties shall meet and confer to narrow the disputed terms and jointly propose ten terms for construction.
- b. If a party genuinely believes that more than ten terms must be construed, that party may file an administrative motion seeking leave to designate additional terms. The moving party must show good cause and explain why other methods of narrowing the claims at issue (e.g. the selection of representative claims or grouping of claims by issue presented) are ineffective. The request must be filed at least two weeks before the deadline for filing the joint claim construction statement. If more than ten terms are submitted without leave of court, the Court will construe the first ten terms listed in the joint claim construction statement, and may impose sanctions.

2. Joint Claim Construction Statement

- a. The joint claim construction statement required by Pat. L.R. 4-3 shall be truly *joint*. Disputed terms, phrases, and clauses shall be clearly designated as such, and the parties must agree on the identity of each disputed term.
- b. The joint statement shall list each disputed term, phrase, or clause (by claim); each party's proposed construction; and support for each party's proposed construction side by side. A model construction statement is attached.
- c. Parties shall attach copies of all patents in dispute. Upon request, parties shall also provide a complete prosecution history for each patent.

3. Claim Construction Briefs

- a. The patentee acts as the moving party. The briefing schedule set forth at Patent L.R. 4-5 applies, with opening briefs due at least six weeks before the hearing. Opening and opposition briefs shall not exceed 25 pages; the reply brief shall not exceed 15 pages.
- b. Claim construction briefs shall address each disputed term in the order of the joint statement. The Court expects that the meet and confer process will obviate the need for a party to propose a claim construction that differs from that set forth in the joint statement. The Court especially discourages the parties from proposing new constructions in reply briefs or other filings that do not afford the opposing party an opportunity to respond. If it becomes necessary to propose a new construction in a brief, however, the proposing party must clearly set forth the new construction and explain the basis for the change. That party shall also revise and resubmit the joint claim construction statement to ensure that the Court has *one* document reflecting all currently proposed constructions.

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4. Tutorial and Claim Construction Hearing

- a. Each side will have approximately 90 minutes to present argument. Counsel shall contact the Courtroom Deputy to schedule the hearing.
- b. The Court will schedule a tutorial if necessary. Each side will have approximately 30 minutes to present a short summary and explanation of the technology at issue. The patentee will present first. The Court prefers that someone other than counsel make the presentation. Visual aids are encouraged. Argument will *not* be permitted. The tutorial is not recorded, and the parties may not rely on statements made during the tutorial in other aspects of the litigation.
- c. The Court ordinarily will not hear extrinsic evidence at the claim construction hearing. Should testimony be necessary, counsel may, at least two weeks prior to the claim construction hearing, request a prehearing conference to seek the Court's approval. Prehearing conferences are held only upon request.
- d. Demonstrative exhibits and visual aids are permissible if based on information contained in the parties' filings. Counsel shall exchange copies of exhibits at least 48 hours before the hearing.

5. Subsequent Case Management Statement

- a. The Court may construe disputed terms at the hearing or take the matter under submission. In either event, the Court will issue a written ruling after the hearing.
- b. Upon issuance of the claim construction ruling, the Court will set a further case management conference. At least seven days prior to the conference, the parties shall file a joint case management statement that addresses the following:
 - i. whether either party wishes to certify the claim construction ruling for immediate appeal to the Federal Circuit;
 - ii. anticipated post-claim construction discovery;
 - iii. the filing of dispositive motion(s);
 - iv. if willful infringement has been asserted, whether the allegedly infringing party plans to rely on the advice-of-counsel defense (if so, the parties should set forth their positions on whether bifurcation of the trial into liability and damages phases is appropriate and proposals for resolving any attorney-client privilege issues that may arise);
 - v. the progress of settlement discussions, if any; and
 - vi. a proposed schedule for discovery, hearing dispositive motions, pretrial conference, and trial.

IT IS SO ORDERED.


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

Sample Claim Chart

Claim Language (Disputed Terms in Bold)	Plaintiff’s Proposed Construction and Evidence in Support	Defendant’s Proposed Construction and Evidence in Support
‘xxx Patent		
<p>1. A method for counting ducks, comprising the steps of:</p> <p>[or]</p> <p>ducks</p> <p>Found in claim numbers:</p> <p>‘xxx Patent: y, z ‘yyy Patent: a, b</p>	<p>duck</p> <p>PROPOSED CONSTRUCTION: a bird that quacks.</p> <p>DICTIONARY/TREATISE DEFINITIONS: Webster’s Dictionary (“duck: bird that quacks”); Field Guide (“bird call: quack”);</p> <p>INTRINSIC EVIDENCE: ‘xxx Patent col. __: __ (“distinctive honking”); Prosecution History at __ (“This patent is distinguished from the prior art in that the quacking of the bird is featured”).</p> <p>EXTRINSIC EVIDENCE: McDonald Depo. at xx:xx (“I’d say the quacking makes it a duck”); ‘123 Patent at col __: __; Donald Decl. at ¶ __ .</p>	<p>duck</p> <p>PROPOSED CONSTRUCTION: a bird that swims</p> <p>DICTIONARY/TREATISE DEFINITIONS: Random House Dictionary (“an aquatic bird”); Field Guide (same)</p> <p>INTRINSIC EVIDENCE: ‘xxx Patent col __: __ (“ducks may be found on or near bodies of water”); Prosecution History at __ (“water fowl are particularly amenable to being counted by this method”).</p> <p>EXTRINSIC EVIDENCE: G. Marx Depo at xx:xx (“like a duck to water”); ‘456 Patent at col __: __; Daffy Decl. at ¶ __.</p>

(Or any other substantively similar format that permits the court to compare terms side by side)

NOT:

Claim Language (Disputed Terms in Bold)	Plaintiff’s Proposed Construction and Evidence in Support	Defendant’s Proposed Construction and Evidence in Support
‘xxx Patent		
<p>1. A method for counting ducks . . .</p>	<p>duck</p>	<p>counting ducks</p>