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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

[PLAINTIFFS], ET AL.,  
Plaintiff(s),  
v.  
[DEFENDANTS], ET AL.,  
Defendant(s).

Case No. EDCV XX-XXXX-KK (XXx)

**PATENT STANDING ORDER**

**PLEASE READ THIS ORDER CAREFULLY. IT GOVERNS THIS CASE  
AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.**

This Order applies to all cases involving a claim of infringement, non-infringement, invalidity, or unenforceability of a utility patent. The Local Civil Rules of the Central District of California and this Court's Civil Standing Order shall also apply to such actions, except to the extent they are inconsistent with any provision of this Order.

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1           **UNLESS OTHERWISE ORDERED BY THE COURT, THE**  
2 **FOLLOWING RULES SHALL APPLY:**

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4 **I.     DISCOVERY**

5           **A.     Confidentiality**

6           The Court’s Standing Protective Order for Patent Cases shall govern discovery  
7 unless the Court issues a different protective order, which may be entered by the  
8 assigned Magistrate Judge without further order from the District Judge. Absent a  
9 Court order, discovery cannot be withheld on the basis of confidentiality.

10           **B.     Relationship to the Federal Rules of Civil Procedure**

11           Except as provided in this paragraph or otherwise ordered, it shall not be a  
12 ground for objecting to discovery requests (such as interrogatories, document  
13 requests, requests for admission, or deposition questions), or declining to provide  
14 information required by Federal Rule of Civil Procedure 26(a)(1), that the discovery  
15 request or disclosure requirement is premature due to, or otherwise conflicts with, this  
16 Order. However, a party may object to the following categories of discovery requests  
17 (or decline to provide information in its initial disclosures under Federal Rule of Civil  
18 Procedure 26(a)(1)) on the ground of prematurity under this Order: (1) requests  
19 seeking a party’s claim construction position; (2) requests seeking from the patent  
20 claimant a comparison of the asserted claims and the accused apparatus, product,  
21 device, process, method, act, or other instrumentality (collectively “Accused  
22 Instrumentality”); (3) requests seeking from an accused infringer a comparison of the  
23 asserted claims and the prior art; and (4) requests seeking from an accused infringer  
24 the identification of any advice of counsel or related documents.

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1 **II. PATENT DISCLOSURES, EARLY MEETING OF THE PARTIES,**  
2 **AND SCHEDULING CONFERENCE**

3 **A. Disclosure of Asserted Claims and Infringement Contentions**

4 No later than 14 days after the Court issues an Order Setting Scheduling  
5 Conference, a party asserting patent infringement shall serve on all parties a  
6 Disclosure of Asserted Claims and Infringement Contentions. Separately for each  
7 opposing party, the Disclosure of Asserted Claims and Infringement Contentions  
8 shall contain the following information:

- 9 1. Each claim of each patent in suit that is allegedly infringed by each  
10 opposing party, including, for each claim, the applicable statutory  
11 subsections of 35 U.S.C. § 271 asserted.
- 12 2. Separately for each asserted claim, each Accused Instrumentality. This  
13 identification shall be as specific as reasonably possible.
- 14 3. A chart identifying specifically where each limitation of each asserted  
15 claim is found within each Accused Instrumentality, including, for each  
16 limitation such party contends is governed by 35 U.S.C. § 112(f), the  
17 identity of the structure(s), act(s), or material(s) in the Accused  
18 Instrumentality that performs the claimed function, and whether each  
19 limitation of each asserted claim is alleged to be literally present or  
20 present under the doctrine of equivalents in the Accused Instrumentality.
- 21 4. For any patent that claims priority to an earlier application, the priority  
22 date allegedly applicable to each asserted claim.
- 23 5. If a party claiming patent infringement wishes to preserve the right to  
24 rely, for any purpose, on the assertion its own apparatus, product,  
25 device, process, method, act, or other instrumentality practices the  
26 claimed invention, the party shall identify, separately for each asserted  
27 claim, each such apparatus, product, device, process, method, act, or  
28 other instrumentality that incorporates or reflects that particular claim.

1           6.     If a party claiming patent infringement alleges willful infringement, the  
2           basis for such allegation.

3           **B.     Document Production Accompanying Disclosure**

4           With the Disclosure of Asserted Claims and Infringement Contentions, the  
5 party claiming patent infringement shall produce the following items, identifying the  
6 documents corresponding to each category by production number:

- 7           1.     A copy of the file history for each patent in suit.
- 8           2.     All documents evidencing ownership of the patent rights by the party  
9           asserting patent infringement.
- 10          3.     If a party identifies instrumentalities under Section II.A.5, documents  
11          sufficient to show the operation of any aspects or elements of such  
12          instrumentalities the patent claimant relies upon as embodying any  
13          asserted claims.

14          **C.     Early Meeting of Counsel**

15          No later than 14 days after the service of the materials required by Sections  
16 II.A and II.B, counsel for the parties shall exchange Federal Rule of Civil Procedure  
17 26(a)(1)(A) initial disclosures and meet in person or telephonically to prepare for the  
18 scheduling conference and prepare the Joint Rule 26(f) Report. Both sides have the  
19 duty to schedule the meeting and comply with this paragraph, with the plaintiff  
20 initiating the process. The parties should consider, where applicable, consolidation of  
21 related cases, including for trial, and transfer for pretrial purposes through the Judicial  
22 Panel on Multidistrict Litigation. The parties should consider the Federal Circuit  
23 Advisory Committee's Model Order Limiting Excess Patent Claims and Prior Art.  
24 The parties should discuss timing of settlement proceedings under the Court-Directed  
25 Alternative Dispute Resolution Program, recognizing settlement decisions, like other  
26 business decisions, are often made with incomplete information. The parties shall  
27 submit their Joint Rule 26(f) Report no later than 14 days after the early meeting of  
28 counsel.

1           **D.    Invalidity Contentions**

2           No later than 14 days after the date of the scheduling conference, each party  
3   opposing a claim of patent infringement shall serve on all parties Invalidity  
4   Contentions containing the following information:

- 5           1.    The identity of each item of prior art that allegedly anticipates each  
6                asserted claim or renders it obvious. Each prior art patent shall be  
7                identified by its number, country of origin, and date of issue. Each prior  
8                art publication shall be identified by its title, date of publication, author,  
9                and publisher. Prior art under 35 U.S.C. § 102(a) or (b) shall be  
10              identified by specifying the item offered for sale or publicly used or  
11              known, the date the offer or use took place or the information became  
12              known, and the identity of the person or entity which made the use or  
13              which made and received the offer, or the person or entity which made  
14              the information known or to whom it was made known. Prior art under  
15              35 U.S.C. § 102(f), or other claim of derivation, shall be identified by  
16              providing the name of the person(s) from whom and the circumstances  
17              under which the invention or any part of it was derived. Prior art under  
18              35 U.S.C. § 102(g) shall be identified by providing the identities of the  
19              person(s) or entities involved in and the circumstances surrounding the  
20              making of the invention before the patent applicant(s).
- 21           2.    Whether each item of prior art anticipates each asserted claim or renders  
22                it obvious. If obviousness is alleged, an explanation of why the prior art  
23                renders the asserted claim obvious, including an identification of any  
24                combinations of prior art showing obviousness.
- 25           3.    A chart identifying where specifically in each alleged item of prior art  
26                each limitation of each asserted claim is found, including, for each  
27                limitation such party contends is governed by 35 U.S.C. § 112(f), the  
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1 identity of the structure(s), act(s), or material(s) in each item of prior art  
2 that performs the claimed function.

- 3 4. Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under  
4 35 U.S.C. § 112(b), or enablement or written description under 35 U.S.C.  
5 § 112(a) of any of the asserted claims.

6 **E. Document Production Accompanying Invalidity Contentions**

7 With the Invalidity Contentions, the party opposing a claim of patent  
8 infringement shall produce the following items, identifying the documents  
9 corresponding to each category by production number:

- 10 1. Source code, specifications, schematics, flow charts, artwork, formulas,  
11 or other documentation sufficient to show the operation of any aspects  
12 or elements of an Accused Instrumentality identified by the patent  
13 claimant's Section II.A.3 chart.
- 14 2. A copy or sample of the prior art identified under Section II.D.1 that  
15 does not appear in the file history of the patent(s) at issue. To the extent  
16 any such item is not in English, an English translation of the portion  
17 relied upon shall be produced.

18 **F. Disclosure Requirement in Patent Cases for Declaratory Judgment  
19 of Invalidity**

20 In all cases where a party files a complaint or other pleading seeking a  
21 declaratory judgment that a patent is invalid, Sections II.A and II.B shall not apply  
22 unless and until a claim for patent infringement is made, and the party asserting patent  
23 infringement shall have 28 days (instead of 14 days) after the Order Setting Scheduling  
24 Conference is issued to make its disclosures pursuant to Sections II.A and II.B. If the  
25 defendant does not assert a claim for patent infringement in its answer to the  
26 complaint, the party seeking a declaratory judgment of invalidity shall serve upon each  
27 opposing party its Sections II.D and II.E disclosures no later than 14 days after the  
28 Order Setting Scheduling Conference is issued.

1 **III. CLAIM CONSTRUCTION**

2 **A. Exchange of Proposed Terms for Construction**

3 No later than 14 days after service of the Sections II.D and II.E disclosures,  
4 each party shall serve on each other party a list of claim terms the party contends  
5 should be construed by the Court and identify any claim term the party contends  
6 should be governed by 35 U.S.C. § 112(f). The parties shall then work to limit the  
7 terms in dispute by narrowing or resolving differences, and to jointly identify the 10  
8 terms likely to be most significant to the case.

9 **B. Exchange of Claim Constructions and Extrinsic Evidence**

10 No later than 14 days after the exchange of the Section III.A lists, the parties  
11 shall simultaneously exchange proposed constructions of each term identified by  
12 either party for claim construction. Each such construction shall also, for each term  
13 that any party contends is governed by 35 U.S.C. § 112(f), identify the structure(s),  
14 act(s), or material(s) corresponding to that term's function. At the same time the  
15 parties exchange their constructions, each party shall also identify all references from  
16 the specification or prosecution history that support its proposed construction and  
17 designate any supporting extrinsic evidence including, without limitation, dictionary  
18 definitions, citations to learned treatises and prior art, and testimony of percipient and  
19 expert witnesses. Extrinsic evidence shall be identified by production number and by  
20 producing a copy if not previously produced. For any supporting witness, percipient  
21 or expert, the identifying party shall also provide a declaration containing that  
22 witness's testimony regarding claim construction. The parties shall then meet and  
23 confer to narrow the issues and finalize preparation of a Joint Claim Construction and  
24 Prehearing Statement.

25 **C. Completion of Claim Construction Discovery**

26 No later than 28 days after service of the material required by Section III.B, the  
27 parties shall complete all discovery desired for claim construction, including any  
28 depositions of fact and expert witnesses regarding claim construction.

1           **D.    Joint Claim Construction and Prehearing Statement**

2           No later than seven days after the completion of claim construction discovery,  
3 the parties shall complete and file a Joint Claim Construction and Prehearing  
4 Statement. The Joint Claim Construction and Prehearing Statement shall contain the  
5 following information:

- 6           1.    The parties' agreed constructions.
- 7           2.    A chart showing each party's proposed construction of each disputed  
8           term, together with an identification of all references from the  
9           specification or prosecution history supporting that construction, and an  
10          identification of any extrinsic evidence supporting its proposed  
11          construction or undermining any other party's proposed construction,  
12          including, but not limited to, dictionary definitions, citations to learned  
13          treatises and prior art, and testimony of percipient and expert witnesses.
- 14          3.    An identification of up to 10 terms whose construction will be most  
15          significant to the case. If the parties cannot agree on the 10 most  
16          significant terms, the parties shall identify the ones they agree are most  
17          significant and then they may evenly divide the remainder. While the  
18          Court may in its discretion construe more than 10 terms, the total terms  
19          identified by all parties as most significant cannot exceed 10. For  
20          example, in a case involving two parties, if the parties agree upon the  
21          identification of five terms as most significant, each may only identify  
22          two additional terms as most significant. A failure to make a good faith  
23          effort to narrow the instances of disputed terms or otherwise participate  
24          in the meet and confer process of any of the provisions in Section III  
25          may expose counsel to sanctions, including under 28 U.S.C. § 1927.

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1 4. Whether the party believes it will need more than 45 minutes total for all  
2 its presentation at a claim construction hearing and, if so: (a) how much  
3 time, and (b) why more time is necessary.

4 5. Whether any party proposes to call one or more witnesses at a claim  
5 construction hearing, the identity of each such witness, and for each  
6 witness, a summary of the testimony including, for any expert, each  
7 opinion to be offered on claim construction.

8 **E. Claim Construction Briefs**

9 No later than seven days after the filing of the Joint Claim Construction and  
10 Prehearing Statement, the parties shall file simultaneous opening claim construction  
11 briefs of not more than 25 pages. No later than 14 days after the filing of the opening  
12 briefs, the parties shall file simultaneous responsive briefs of not more than 10 pages.  
13 With its responsive brief, each party shall submit any presentation material (such as  
14 demonstrative exhibits, including PowerPoint or other slide presentations) it wishes to  
15 use at a claim construction hearing, and may submit a technology tutorial of no more  
16 than 20 minutes in length. Any presentation materials shall be served on all parties as  
17 of the time that they are filed. The Court will not accept, and will not permit the  
18 parties to use, any presentation material that was not submitted with the briefing at  
19 any claim construction hearing. If a party wishes to use a physical exhibit at a claim  
20 construction hearing, it shall file with its responsive brief photographs of the physical  
21 exhibit along with a statement that it intends to use the physical exhibit at the hearing.

22 Concurrently with the filing of the responsive briefs, the parties shall jointly  
23 lodge with the Court the following material:

- 24 1. A chart in Word format providing the parties' proposed constructions of  
25 each disputed term, with a column for the Court's construction.
- 26 2. An annotated copy of the certified file history for each asserted patent.  
27 Each file history shall be printed double-sided, indexed, tabbed, and  
28 compiled in a three-ring binder. Each office action, response, filing, or

1 other communication shall be given a separate tab, with the date of each  
2 clearly designated. Portions of the file history relied upon by the  
3 patentee for claim construction shall be highlighted in yellow. Portions  
4 of the file history relied upon by the accused infringer(s) shall be  
5 highlighted in blue. Portions of the file history relied upon by both sides  
6 shall be highlighted in green.

- 7 3. An electronic copy of each file history on a USB flash drive. Each file  
8 history shall be a single PDF file with bookmarks corresponding to the  
9 tabs on the paper copy and shall contain the highlighting present on the  
10 paper copy.

11 **F. Claim Construction Hearing**

12 Subject to the Court's calendar, approximately 112 days (16 weeks) after the  
13 scheduling conference, the Court may conduct a claim construction hearing. Each  
14 side shall have 45 minutes for its presentation, subject to enlargement at the Court's  
15 discretion. Again, parties may not use at the hearing any presentation material they  
16 did not previously serve on opposing counsel and submit to the Court in accordance  
17 with Section III.E.

18 **IV. FINAL CONTENTIONS, EXPERT REPORTS, DISCLOSURE OF**  
19 **ADVICE OF COUNSEL, AND MOTION HEARING CUT-OFF**

20 **A. Final Infringement Contentions and Expert Reports**

21 No later than 28 days after the Court's claim construction ruling, the party  
22 claiming patent infringement shall produce the following information:

- 23 1. All Rule 26 expert reports on issues where the party claiming patent  
24 infringement bears the burden of proof.
- 25 2. A statement that its Section II.A contentions are its Final Infringement  
26 Contentions or, in the alternative, Final Infringement Contentions that  
27 amend its Section II.A contentions. A party serving Final Infringement  
28 Contentions that amend its prior contentions shall also provide a redline

1 against its prior contentions and a statement of reasons for each  
2 amendment. Amendments are subject to a good cause standard but do  
3 not require prior Court approval where they are made due to a claim  
4 construction by the Court different from that proposed by the party  
5 seeking amendment, or recent discovery of nonpublic information about  
6 the Accused Instrumentality that was not discovered, despite diligent  
7 efforts, before the service of the Infringement Contentions.

8 The deadlines established herein do not excuse the requirement to supplement  
9 disclosures and discovery responses promptly. If a party receiving Final Infringement  
10 Contentions believes amendments were made without good cause, it may move the  
11 Court to strike them.

12 **B. Final Invalidity Contentions and Expert Reports**

13 No later than 28 days after service of the Final Infringement Contentions, the  
14 party opposing a claim of patent infringement shall produce the following  
15 information:

- 16 1. All Rule 26 expert reports on issues where the party opposing a claim of  
17 patent infringement bears the burden of proof.
- 18 2. A statement that its Section II.D contentions are its Final Invalidity  
19 Contentions or, in the alternative, Final Invalidity Contentions that  
20 amend its Section II.D contentions. A party serving Final Invalidity  
21 Contentions that amend its prior contentions shall also provide a redline  
22 against its prior contentions and a statement of reasons for each  
23 amendment. Amendments are subject to a good cause standard but do  
24 not require prior Court approval where they are made due to a claim  
25 construction by the Court different from that proposed by the party  
26 seeking amendment, or recent discovery of material prior art that was  
27 not discovered, despite diligent efforts, before the service of the  
28 Invalidity Contentions.

1 The deadlines established herein do not excuse the requirement to supplement  
2 disclosures and discovery responses promptly. If a party receiving Final Invalidity  
3 Contentions believes amendments were made without good cause, it may move the  
4 Court to strike them.

5 **C. Rebuttal Expert Reports and Close of Discovery**

6 Rebuttal expert reports are due no later than 28 days after service of the parties'  
7 respective Sections IV.A and IV.B reports. Discovery closes 28 days after service of  
8 the latest set of rebuttal reports. This will typically be approximately 112 days (16  
9 weeks) after the Court's claim construction ruling.

10 Amendments to or supplementation of expert reports after the deadlines  
11 established herein are presumptively prejudicial and will not be allowed absent prior  
12 leave of court upon a showing of good cause the amendment or supplementation  
13 could not reasonably have been made earlier and the opposing party is not unfairly  
14 prejudiced.

15 **D. Advice of Counsel**

16 No later than 28 days after the Court's claim construction ruling, each party  
17 relying upon advice of counsel as part of a patent-related claim or defense for any  
18 reason shall produce the following information:

- 19 1. Any written advice and related documents for which the attorney-client  
20 and work-product protection have been waived.
- 21 2. A written summary of any oral advice and related documents for which  
22 the attorney-client and work-product protection have been waived.
- 23 3. A privilege log identifying any other documents, except those authored  
24 by counsel acting solely as trial counsel, relating to the subject matter of  
25 the advice that the party is withholding on the grounds of attorney-client  
26 privilege or work-product protection.

1 A party that fails to comply with this provision will not be permitted to rely on  
2 advice of counsel for any purpose absent a stipulation of all parties or order of the  
3 Court.

4 **E. Motion Hearing Cut-Off**

5 All dispositive motions shall be noticed for hearing on or before the motion  
6 hearing cut-off, which will typically be approximately 56 days (8 weeks) after the close  
7 of discovery.

8 **V. TRIAL**

9 Generally, trial procedure is governed by this Court's Civil Trial Scheduling  
10 Order and the Central District of California's Local Civil Rules, except to the extent  
11 either is inconsistent with any provision of this Order. In extraordinary cases, the  
12 Court will consider implementing alternative trial procedures, such as allowing short  
13 statements introducing each witness's testimony before examination and giving the  
14 jury a full set of instructions before the presentation of evidence.

15 **IT IS SO ORDERED.**

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18 Dated:

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HONORABLE KENLY KIYA KATO  
United States District Judge

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