IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STANDING ORDER FOR PATENT CASES

The following instructions shall apply to all patent cases assigned to Judge Jeffrey S. White.

Joint Claim Construction Statement

1. The initial joint claim construction statement required by Patent Local Rule 4-3 shall be truly joint. Disputed terms, phrases, and clauses shall be designated as disputed. All other terms shall be presumed undisputed. For any term in dispute, the parties must agree on the identity of the term. With regard to disputed terms, phrases, or clauses, the joint statement shall list each disputed term, phrase, or clause (listed by claim); each party's proposed construction; and support for each party's proposed construction side by side. A model construction statement is attached to this Order.

2. Parties shall attach to the joint claim construction statement copies of all patents in dispute. Parties shall also make a complete prosecution history for each patent available to the Court upon request.

Claim Construction

3. As an initial matter, the Court will construe no more than ten terms. If more than ten terms are at issue, the parties shall meet and confer before the preparation of the joint claim construction statement on narrowing the selection of terms to be construed by the Court and shall jointly propose the ten terms requiring construction.

4. If a party genuinely believes that it will require that more than ten terms be

construed, that party may request leave to designate additional terms for construction, pursuant to Civil Local Rule 7-10(b). The requesting party must demonstrate good cause and explain why other methods of limiting the claims at issue (such as the selection of representative claims or any grouping of claims by issues presented) would be ineffective. The request must be filed no later than two weeks before the deadline for filing the joint claim construction statement. If good cause is shown, the Court will either agree to construe all terms or schedule a second claim construction proceeding on the excess terms. If more than ten terms are submitted for construction without leave of court, the Court will construe the first ten terms listed in the joint claim construction statement and sanctions may be imposed.

5. Claim construction briefs shall address each disputed term, but only those that are truly disputed, following the order of the joint statement. The opening and opposition briefs shall not exceed 25 pages; the reply brief shall not exceed 15 pages. The Court anticipates that a meaningful meet and confer between the parties preceding the preparation of the joint claim construction statement will obviate the need for a party to propose in its briefs a claim construction that differs from that proposed in the statement. While the Court encourages the parties to negotiate mutually agreeable constructions, the Court discourages the parties from proposing new constructions for the first time in reply briefs or other filings which do not afford the opposing party an opportunity to respond. However, if it becomes necessary for a party to propose a different construction in its brief than that found in the joint claim construction statement, that party must clearly set forth the new construction and explain the basis for the change. Additionally, that party shall revise the joint claim construction statement, so that the Court will have one document reflecting all current proposed constructions.

6. At the time of filing the reply briefs, the parties shall file an amended, final joint claim construction statement, including only the remaining disputed terms, phrases, and clauses.

Tutorial and Claim Construction Hearing

7. The Court will schedule a tutorial to occur one to two weeks prior to the claim construction hearing. Each side will be permitted 45-60 minutes to present a short summary and explanation of the technology at issue. The patent holder makes the first presentation. Visual

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aids are encouraged. The Court prefers that someone other than counsel make the presentation. Counsel will be permitted to make opening remarks and then a brief summation following the presentation. No argument will be permitted. The proceeding is not recorded and parties may not rely on statements made at the tutorial in other aspects of the litigation.

8. Prehearing conferences generally are not held. However, either party may request a telephone conference within two weeks prior to the hearing, or the parties may address any prehearing issues at the tutorial.

9. The patent holder will act as the moving party for the purposes of claim construction. Opening briefs in support of claim construction must be filed at least six weeks before the date of the claim construction hearing, and the briefing schedule set forth at Patent Local Rule 4-5 will apply.

10. The Court will not ordinarily hear extrinsic evidence at the claim construction hearing. Should it become apparent that testimony will be necessary, counsel may request a telephone conference with the Court within two weeks of the hearing to seek the Court's approval.

11. Demonstrative exhibits and visual aids are permissible at the hearing as long as they are based on information contained in the papers already filed. Counsel shall exchange copies of exhibits no later than forty-eight hours prior to the hearing.

12. The claim construction hearing generally will be scheduled for no longer than 3 hours on either Tuesday or Wednesday afternoon. The Court, however, will specially set the hearing on a different day and for a longer period of time if warranted. Counsel should request a telephone conference with the Court as soon as it is apparent that a special setting is necessary.

Subsequent Case Management Report

13. Upon issuance of the claim construction ruling, the Court will also set a date for the filing of a further joint case management status report. In that report, the parties must address the following topics:

a) whether either party wishes to certify the claim construction ruling for immediate appeal to the Federal Circuit;

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b) the filing of dispositive motions, and timing of those motions;

c) if willful infringement has been asserted, whether the allegedly-infringing party wishes to rely on the advice of counsel defense. If so, the parties should be prepared to address proposals for resolving any attorney-client privilege issues that arise, and whether the parties believe bifurcation of the trial into liability and damages phases would be appropriate;

d) anticipated post-claim construction discovery;

e) any other pretrial matters; and

f) the progress of settlement discussions, if any.

The Court will review the reports and, if necessary, schedule a further case management conference and enter any appropriate orders.

Miscellaneous

14. All stipulated protective orders and filings shall comply with Civil Local Rule 79-5. Parties shall also submit a complete unredacted chambers copy of any brief or supporting papers lodged under seal with all confidential material highlighted.

IT IS SO ORDERED.

SEP 0 7 2011

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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Sample Claim Chart

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

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