

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____,
Plaintiff,
-against-
_____,
Defendant.

_____ -MKV

PATENT CASE MANAGEMENT PLAN
AND SCHEDULING ORDER

MARY KAY VYSKOCIL, United States District Judge:

The parties propose the following schedule for this matter:

1. Any party claiming patent infringement must serve on all parties a “Disclosure of Asserted Claims and Infringement Contentions” and other items required by Local Patent Rules 6 and 9 of the Southern District of New York no later than ____. [**45 days after the Initial Scheduling Conference**]
2. [*If the action seeks a declaratory judgment of patent invalidity*] Any party seeking a declaratory judgement that a patent is not infringed, is invalid, or is unenforceable must serve upon all parties its “Invalidity Contentions” required by Local Patent Rules 7, 8, and 9 of the Southern District of New York no later than _____. [**45 days after the Initial Scheduling Conference**].
3. Any party opposing a claim of patent infringement must serve upon all parties its “Invalidity Contentions” required by Local Patent Rules 7 and 9 of the Southern District of New York no later than _____. [**45 days after Disclosure of Asserted Claims and Infringement Contentions.**]
4. The parties shall exchange proposed terms of claim elements for construction by _____. [**10 days after No. 3**]
5. The parties shall exchange preliminary claim construction and extrinsic evidence by _____. [**20 days after No. 4**]
6. The parties shall jointly file a Joint Disputed Claim Terms Chart as provided in Local Patent Rule 11 of the Southern District of New York on or before _____. [**60 days after No. 3**]
7. The parties shall complete all discovery related to claim construction, including any depositions with respect to claim construction of any witnesses, by _____ [**30 days after No. 5**]

8. The parties shall appear for a case management conference on _____ at _____ am/pm. **[7 days after No. 7]**. If any party wishes to make a motion at this time, it should submit a pre-motion letter in accordance with the Court's Individual Rules at least four days prior to this conference.
9. The party asserting infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall file an opening claim construction brief and all supporting evidence and testimony on or before _____. **[30 days after No. 7]** The opposing party shall file a response to the opening claim construction brief and all supporting evidence and testimony by _____. **[30 days from the filing of the opening brief]** The opening party shall file a reply solely rebutting the opposing party's response by _____. **[7 days from the filing of the response]** These submissions shall be submitted in accordance with the page limitations provided in the Court's Individual Rule 4.A.iii.
10. The parties shall jointly file a claim construction chart by _____. **[7 days after the reply in No. 9]**
 - (a) Said chart shall have a column listing complete language of disputed claims with disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. The chart shall also include a fourth column entitled "Court's Construction" and otherwise left blank. Additionally, the chart shall also direct the Court's attention to the patent and claim number(s) where the disputed term(s) appear(s).
 - (b) The parties may also include constructions for claim terms to which they have agreed. If the parties choose to include agreed constructions, each party's proposed construction columns shall state "[**AGREED**]" and the agreed construction shall be inserted in the "Court's Construction" column.
 - (c) The purpose of this claim construction chart is to assist the Court and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements set forth in this rule, the parties are afforded substantial latitude in the chart's format so that they may fashion a chart that most clearly and efficiently outlines the disputed terms and proposed constructions. Appendices to the Court's prior published and unpublished claim construction opinions may provide helpful guidelines for parties fashioning claim construction charts.
11. The Court will issue an order scheduling a claim construction hearing at the post-discovery conference.
12. The parties are reminded that pursuant to SDNY Rule 10, each party that will rely on an opinion of counsel as part of a defense to a claim of willful infringement or inducement of infringement, or that a case is exceptional, must produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which attorney-client or work product protection has been waived as a result of such production no later than _____. **[30 days after the Court's claim construction ruling]**

- 13.** The producing party shall serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work-product protection.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein shall be made in a written application in accordance with the Court's Individual Rules and shall be made no less than two business days prior to the expiration of the date sought to be extended.

Failure to comply with this order and the deadline stated herein may result in sanctions, including preclusion of claims or defenses at trial.

SO ORDERED.

Date: _____
New York, NY

MARY KAY VYSKOCIL
United States District Judge

Counsel for the Parties:

