

LARIVIERE, GRUBMAN PC

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Attorneys for Defendant
INSTITUTE FOR ENVIRONMENTAL HEALTH, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRIMUS GROUP, INC.,

Plaintiff/Counterdefendant,

vs.

INSTITUTE FOR ENVIRONMENTAL
HEALTH, INC.,

Defendant/Counterclaimant.

) Case No. 5:18-cv-00005-WHO
)
) **PATENT LOCAL RULE 4-3**
) **JOINT CLAIM CONSTRUCTION**
) **AND PREHEARING STATEMENT**

Pursuant to Local Patent Rule 4-3, the parties to this action, Plaintiff Primus Group, Inc. ("Primus") and Defendant Institute for Environmental Health, Inc. ("IEH"), hereby submit this Joint Claim Construction and Prehearing Statement. The patents at issue are U.S. Patents Nos. 8,822,143 ("the '143 Patent") and 9,637,771 ("the '771 Patent").

A. Patent L.R. 4-3(a): Agreed Construction of Terms

The parties have identified the following terms upon which they agree on construction:

	<u>Claim Term</u>	<u>Agreement</u>
1.	Enriching / enriched	“Enriching” means “incubating a sample under conditions suitable to allow levels of a target agent/organism that is present to reach detectable levels and become uniform or substantially uniform.”
2.	Selective agent	A “selective agent” means an “agent that inhibits competing non-target microbe(s).”
3.	Validate	To “validate” means to “determine that a particular sample tests negative using the detection assay.”

B. Patent L.R. 4-3(b): Disputed Claim Constructions and Supporting Evidence

The parties request the Court construe the following term and propose the following constructions:

	<u>Claim Term</u>	<u>IEH’s Proposed Construction</u>	<u>Primus’s Proposed Construction</u>
1.	Separately collecting multiple independent samples from each of multiple separate [lots / test lots / single-unit production lots / single production lots]	Collecting multiple samples from different, non-contiguous locations from each of multiple separate [lots / test lots / single-unit production lots / single production lots]	Collecting multiple portions from each of multiple [lots/test lots/single-unit production lots/single production lots]

The parties identify the following evidence on which they intend to rely to support their proposed constructions:

<u>Evidence Identified by Primus</u>	<u>Evidence Identified by IEH</u>
<u>Intrinsic:</u> '143 Patent: Col. 5:34-45; Col. 5:52-55; Col. 9:21-26; Claim 29 '771 Patent: Col. 5:13-19; 5:43-54; Col. 5:61-64; Col. 9:36-41; Claims 3, 4, 18-21	<u>Intrinsic:</u> '143 Patent: Abstract:1-14; Col. 1:33-36; Col. 2:12-24; Col. 2:28-38; Col. 2:49-52; Col. 2:55-57; Col. 3:5-15; Col. 3:22-28; Col. 3:38-43; Col. 3:46-52; Col. 3:61 to 4:3; Col. 4:7-9; Col. 4:14-24; Col. 4:36-47; Col. 5:2-8; Col. 5:23-25; Col. 5:34-44; Col. 5:46-60; Col. 5:65 to 6:2; Col. 7:17-24; Col. 7:38-41; Col. 7:45-54; Col. 7:64 to 8:5; Col. 8:12-14; Col. 8:41-57; Col. 9:1-10; Col. 9:21-44; Col. 10:29-51; Col. 11:37-50; Col. 12:5-13; Col. 12:42-44; Col. 12:50-61; Col. 13:4-8; Col. 13:21-33; Col. 13:56-63; Col. 14:15-18; Col. 15:9-12; Col. 15:27-45; Col. 16:27-48; Col. 17:15-31; Col. 17:49-55 '771 patent: Abstract:1-14; Col. 2:20-32; Col. 2:36-47; Col. 2:64-67; Col. 3:13-30; Col. 3:32-40; Col. 3:46-52; Col. 3:55-62; Col. 4:4-14; Col. 4:17-20; Col. 4:24-34; Col. 4:47-58; Col. 5:13-19; Col. 5:25-27; Col. 5:31-37; Col. 5:43-53; Col. 5:55-60; Col. 5:64 to 6:2; Col. 6:7-11; Col. 7:29-36; Col. 7:57-63; Col. 8:11-19; Col. 8:26-28; Col. 8:54 to 9:4; Col. 9:16-25; Col. 9:37-60; Col. 10:48-63; Col. 10:65 to 11:8; Col. 12:1-14; Col. 12:36-45; Col. 13:2-5; Col. 13:10-23; Col. 13:34-38; Col. 13:50-62; Col. 14:16-23; Col. 14:43-46; Col. 15:32-35; Col. 15:49-67; Col. 16:48-54; Col. 16:60 to 17:14; Col. 17:61 to 18:4; Col. 18:8-16; Col. 18:31-46; Col. 18:51 to 19:2

C. Patent L.R. 4-3(d): Hearing Length

The parties anticipate that two and a half hours, divided evenly between Primus and IEH,

will be sufficient for the technology tutorial and argument on the disputed claim construction.

D. Patent L.R. 4-3(e): Witnesses

Neither party anticipates calling witnesses at the Claim Construction Hearing.

E. Patent L.R. 4-3(f): Requested Factual Findings

Neither party requests any factual findings from the Court related to claim construction.

Dated: July 31, 2018

LARIVIERE, GRUBMAN PC

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HEALTH, INC.

The undersigned, counsel of record for Primus Group, Inc, hereby attests that I obtained permission from counsel for Defendant Institute for Environmental Health, Inc., to file the above **PATENT LOCAL RULE 4-3 JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT.**

Dated: July 31, 2018

By: /s/ Scott J. Allen

Scott J. Allen