UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANDING ORDER FOR PATENT CASES BEFORE JUDGE EUMI K. LEE

(August 16, 2024)

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Imperative Care v. Inari Medical
IPR2025-00728
Imperative Care Ex. 1028

I. APPLICATION OF STANDING ORDER

Unless otherwise indicated by the Court, this Standing Order applies to all actions asserting claims for patent infringement and for declaratory judgment of non-infringement assigned to Judge Eumi K. Lee. Parties and counsel shall comply with all aspects of this Standing Order, the Court's Standing Order for Civil Cases, the Federal Rules of Civil Procedure, the Civil and Patent Local Rules, and all General Orders of the Northern District of California.

II. PATENT DISCLOSURES

Disputes regarding any party's Patent Disclosures are referred to the assigned Magistrate Judge. Requests to amend a party's Infringement or Invalidity Contentions are likewise referred to the assigned Magistrate Judge.

III. JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

A. Contents

Any disputed terms, phrases, and clauses (hereinafter, for simplicity, "terms") 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. For each claim, each party shall identify with specificity the intended impact of the proposed constructions on the merits of the case.

With regard to disputed terms, the joint statement shall list each term, each party's proposed construction, and support for each party's construction side by side. Parties are reminded that proposed constructions should be suitable for incorporation in a jury instruction. A model statement is included as Attachment A to this Order.

B. Attachments

Parties shall attach a copy of each patent in dispute to the joint claim construction statement. Parties shall also be prepared to make the complete prosecution history for each patent available to the Court upon request.

IV. CLAIM CONSTRUCTION BRIEFING

A. Scope

As an initial matter, the Court will construe only those terms designated by the parties as "most significant" pursuant to Patent Local Rule 4-3(c). Therefore, the Court will generally construe no more than ten (10) terms. If multiple terms present identical issues, they may be grouped together or a representative term may be chosen, and each group or representative term may be considered a single term for purposes of the ten-term limit. If more than ten (10) terms are at issue, the parties must meet and confer before the preparation of the joint claim construction statement to narrow the number of terms that are to be construed by the Court and shall jointly propose the ten (10) terms requiring construction.

B. Enlarging the Scope

If any party genuinely believes that construing more than ten (10) terms is necessary, that party may request leave to designate additional terms for construction by filing an administrative motion under Civil Local Rule 7-11. 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. If all parties agree that more than ten (10) terms should be construed, the motion should be made jointly. Any such request, whether unilateral or joint, must be made on or before the deadline for filing the Joint Claim Construction and Prehearing Statement. If good cause is shown, the Court may agree to construe all terms or schedule a second claim construction proceeding on the excess terms. If more than ten (10) terms are submitted for construction without leave of court, the Court will construe the first ten (10) terms listed in the joint claim construction statement and sanctions may be imposed.

C. Format

The opening and responsive briefs shall not exceed 25 pages; the reply brief shall not exceed fifteen (15) pages.

D. Timing

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 (6) weeks before the date of the claim construction hearing, and the briefing schedule set forth at Patent Local Rule 4-5 will apply. The parties shall propose briefing deadlines in their joint initial case management statement. The Court will issue a scheduling order following the parties' submission.

E. Final Claim Construction Positions

Claim construction briefs must address each disputed term, but only those that are truly disputed, following the order of the joint statement. The Court anticipates that a meaningful meet and confer between the parties preceding the preparation of the joint claim construction statement will eliminate 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 parties may not propose new constructions for the first time in reply briefs or other filings that do not afford the opposing party an opportunity to respond. If for some exceptional reason a party needs to propose a different construction in its brief than that found in the joint claim construction statement, that party must submit a short request for consideration to the Court that clearly sets forth the new construction and explains the basis for the change.

If there has been any change in the parties' claim construction positions, the parties shall file an amended, final joint claim construction statement at the time of filing the claim construction reply brief. The amended statement shall include only the remaining disputed terms, phrases, and clauses.

V. TUTORIAL AND CLAIM CONSTRUCTION HEARING

A. Tutorial

The Court may schedule a tutorial to occur one to two (1-2) weeks prior to the claim construction hearing. Each side will generally be permitted 30 to 45 minutes to present a short summary and explanation of the technology at issue.

The purpose of the tutorial is for the parties to inform and educate the Court about the technology involved in the case. Unless the parties agree otherwise, the patent holder makes the first presentation. Demonstrations and visual aids are encouraged. Parties can decide who should make the presentation. Inventors, company personnel, and individuals who work directly with the technology are often good candidates. No argument or cross-examination will be permitted, but the Court may pose questions to parties and witnesses. Parties may not use or rely on statements made at the tutorial in the litigation. If the parties agree to make a joint presentation, the Court will entertain requests for additional time. Prior to the tutorial, the parties shall contact the Courtroom Deputy, Laura Thomson, at (408) 535-5330 or eklcrd@cand.uscourts.gov to arrange to test any audio-visual equipment if needed.

B. Prehearing Conference

Prehearing conferences generally are not held. However, either party may request a telephone or video conference within two (2) weeks prior to the hearing, or the parties may address any prehearing issues at the tutorial.

C. Claim Construction Hearing

The claim construction hearing generally will be scheduled for no longer than three (3) hours on a Tuesday or Thursday 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.

The parties' arguments should focus on intrinsic evidence, *i.e.*, the patent itself and the prosecution history. Live testimony at claim construction is disfavored; it will be allowed only by court order upon an administrative motion explaining why the testimony would be useful. Such a motion must be filed at least fourteen (14) days before the hearing.

Demonstrative exhibits and visual aids are permissible at the tutorial and the claim construction hearing as long as they are based on information contained in papers previously filed. No later than one (1) week prior to the tutorial and/or claim construction hearing, counsel shall exchange copies of any exhibits and visual aids and shall submit to the Court bound copies of the exhibits and visual aids.

VI. SUBSEQUENT CASE MANAGEMENT CONFERENCE

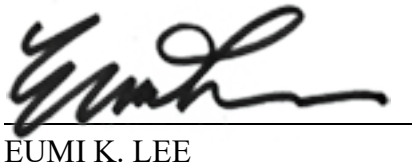
At the time the claim construction ruling issues, the Court will also set a further case management conference. In a joint case management statement to be filed no later than fourteen (14) days before the conference, the parties must address the following topics:

1) whether either party wishes the Court to certify the claim construction ruling for immediate appeal to the Court of Appeals for the Federal Circuit;
2) the filing of dispositive motions, and timing of those motions;
3) if willful infringement has been asserted, whether the party accused of infringement 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;
4) anticipated post-claim construction discovery;
5) any other pretrial matters;
6) proposed deadlines and court dates for the remainder of the case schedule;
7) the progress of settlement discussions, if any; and
8) any changes or updates to any of the information requested in the Standing Order for All Judges of the Northern District of California re Contents of Joint Case Management Statement that have arisen since the filing of the parties' previous case management statement.

The Court will review the statement to determine whether the conference is necessary and will enter any appropriate orders.

IT IS SO ORDERED.

Dated: August 16, 2024



EUMI K. LEE
United States District Judge

ATTACHMENT A

Model Joint Claim Construction Statement

Claim Language (Disputed Terms in **Bold**)	Plaintiff's Proposed Construction and Evidence in Support	Defendant's Proposed Construction and Evidence in Support
1. A method for counting wild **ducks**, comprising the steps of . . . ('123 Patent, Claims 1 & 2) [or] **ducks** Found in: '123 Patent, Claims 1, 2 '456 Patent, Claims 1, 8	PROPOSED CONSTRUCTION: <u>birds that quack</u> INTRINSIC EVIDENCE: '123 Patent col. 5:8 ("distinctive honking"); Response to Office Action, 4/15/09, at 3 ("This patent is distinguished from the prior art in that the quacking of the bird is featured."). DICTIONARY/TREATISE DEFINITIONS: Webster's Dictionary ("duck: bird that quacks"); Field Guide ("bird call: quack"). EXTRINSIC EVIDENCE: McDonald Dep. at 12:10 ("I'd say the quacking makes it a duck."); '456 Patent at col. 9:4; Donald Decl. ¶ 6.	PROPOSED CONSTRUCTION: <u>birds that swim</u> INTRINSIC EVIDENCE: '123 Patent col 5:10 ("ducks may be found on or near bodies of water"); Response to Office Action, 4/15/09, at 4 ("water fowl are particularly amenable to being counted by this method"). DICTIONARY/TREATISE DEFINITIONS: Random House Dictionary ("An aquatic bird"); Field Guide (same). EXTRINSIC EVIDENCE: Clark Dep. at 13:11 ("like a duck to water"); '456 Patent at col. 1:38; Daffy Decl. ¶ 7.