FILED
CHARLOTTE, NC
MAR 18 2011
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

MISC. 3:11mc30

IN THE MATTER OF	:	**ORDER ADOPTING LOCAL PATENT**
RULES OF PRACTICE AND	:	**RULES OF PRACTICE AND**
PROCEDURE IN THIS COURT	:	**PROCEDURE**

For Good cause appearing to the Court this 18th day of March, 2011.

IT IS ORDERED that:

1. The following Local Patent Rules of Practice and Procedure in the United States District Court for the Western District of North Carolina are hereby adopted effective at 12:01 A.M. on the 31st day of March, 2011. These rules shall apply to all ***pending*** patent cases unless the Court finds that their application in a specific case would result in injustice or hardship. In instances where these local rules may be in conflict with any standing pretrial order of any judge of this court, counsel shall be guided by the pretrial order pending clarification of the conflict with the presiding judge.

2. These rules are adopted in compliance with and pursuant to the authority of Rule 83, Fed. R. Civ. P.; Rule 57, Fed. R. Crim. P.; and other federal rules and statutes providing for district court local rules.

3. These local rules supplement the Federal Rules of Civil Procedure as necessary in all civil suits in the United States District Courts for the Western District of North Carolina. Where applicable, these rules also supplement the Federal Rules of Bankruptcy Procedure.

4. Prior to the adoption of these rules the court solicited comments and carefully considered all comments which were received as the result of the posting of the rules.

5. The Clerk is directed to promptly publish these rules electronically; make hard copies available upon request; serve copies on the Administrative Office of the United States Courts, the Attorney General of the United States, the Fourth Circuit Judicial Council, and the Federal Rules Committees.

SO ORDERED, THIS 18th DAY OF March, 2011.

Robert J. Conrad, Jr., Chief
U.S. District Judge

Richard L. Voorhees
U.S. District Judge

Frank D. Whitney,
U.S. District Judge

Martin Reidinger
U.S. District Judge

Graham C. Mullen, Senior
U.S. District Senior Judge

RULES OF

PRACTICE AND PROCEDURE

OF THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT

OF NORTH CAROLINA

Local Patent Rules

Effective Date March 31, 2011

TABLE OF CONTENTS
LOCAL PATENT RULES

I. SCOPE OF RULES

P.R. 1.1 TITLE.

P.R. 1.2 SCOPE AND CONSTRUCTION.

P.R. 1.3 EFFECTIVE DATE.

II. GENERAL PROVISIONS

P.R. 2.1 GOVERNING PROCEDURE.

(A) ***Initial Attorneys' Conference.***

(B) ***Electronic Filings.***

P.R. 2.2 CONFIDENTIALITY.

P.R. 2.3 CERTIFICATION OF INITIAL DISCLOSURES.

P.R. 2.4 ADMISSIBILITY OF DISCLOSURES.

P.R. 2.5 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE CONCERNING DISCOVERY.

III. PATENT INITIAL DISCLOSURES

P.R. 3.1 DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS.

P.R. 3.2 DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE.

P.R. 3.3 INVALIDITY CONTENTIONS.

P.R. 3.4 DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS.

P.R. 3.5 DISCLOSURE REQUIREMENT IN PATENT CASES FOR DECLARATORY JUDGMENT.

(A) ***Invalidity Contentions If No Claim of Infringement.***

(B) ***Applications of Rules When No Specified Triggering Event.***

(C) ***Inapplicability of Rule.***

P.R. 3.6 AMENDING AND SUPPLEMENTING CONTENTIONS.

(A) ***Leave Not Required.***

(B) ***Leave Required.***

P.R. 3.7 WILLFULNESS; DISCOVERY OF OPINIONS OF COUNSEL.

IV. CLAIM CONSTRUCTION PROCEEDINGS

P.R. 4.1 EXCHANGE OF PROPOSED TERMS AND CLAIM ELEMENTS FOR CONSTRUCTION.

P.R. 4.2 EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE.

P.R. 4.3 JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT.

P.R. 4.4 COMPLETION OF CLAIM CONSTRUCTION DISCOVERY.

P.R. 4.5 CLAIM CONSTRUCTION BRIEFS.

P.R. 4.6 CLAIM CONSTRUCTION HEARING.

I. SCOPE OF RULES

P.R. 1.1 TITLE.

These Local Patent Rules are the rules of practice for patent cases before the United States District Court for the Western District of North Carolina. They should be cited as "P.R. __."

P.R. 1.2 SCOPE AND CONSTRUCTION.

These rules apply to all civil actions filed in or transferred to this Court that allege infringement of a utility patent ("patent") in a complaint, counterclaim, cross-claim, or third-party claim, or which seek a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable. If any motion filed prior to the Claim Construction Hearing provided for in P.R. 4.6 raises claim construction issues, the Court may defer ruling on the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Local Civil Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Patent Rules. The obligations or deadlines set forth in these Patent Rules may be modified by the Court in specific cases.

While the obligations and deadlines in these Patent Rules are intended to apply to all utility patent cases, the Court may alter the obligations or deadlines based on the circumstances of any particular case, including, for example, the complexity of the case or the number of patents, claims, products, or parties involved. These Patent Rules are not intended for cases involving only design patents. In cases involving only design patents, the parties will submit a proposed case management order under the Local Civil Rules that gives due regard to any portion of these Patent Rules that would make the conduct of

those cases more efficient.

P.R. 1.3 EFFECTIVE DATE.

These Patent Rules shall take effect on March 31, 2011, and shall apply to any case filed or transferred to this Court thereafter. Relevant provisions of these rules may be applied to any pending case by the Court, on its own motion or on motion by any party.

II. GENERAL PROVISIONS

P.R. 2.1 GOVERNING PROCEDURE.

(A) ***Initial Attorneys' Conference.*** When the parties confer with each other in the Initial Attorneys' Conference (IAC), in addition to the matters typically covered in the IAC, the parties must discuss and address in the Certificate of Initial Attorneys' Conference the following topics:

(1) Proposed modification of the deadlines provided for in the Patent Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(2) Whether the parties anticipate presenting live testimony at the Claim Construction Hearing;

(3) The scope of claim construction discovery, including depositions of fact and expert witnesses;

(4) The order of presentation at the Claim Construction Hearing;

(5) Whether the parties request a claim construction prehearing conference be held after the Joint Claim Construction and Prehearing Statement provided for in P.R. 4.3 has been filed;

(6) Whether the Court should authorize the filing under seal of any

documents containing confidential information;

(7) Whether it may be appropriate to bifurcate discovery for infringement, invalidity, and damages issues;

(8) Whether the parties believe that appointment of a Special Master may be helpful to the parties and the Court; and

(9) Any other patent-related issues foreseeable in the case.

(B) ***Electronic Filings.*** All filings shall be in searchable PDF format. Any documents attached as exhibits to any filing submitted electronically should be in searchable PDF format whenever possible.

P.R. 2.2 CONFIDENTIALITY.

If any document or information produced under these Patent Rules is deemed confidential by the producing party and if the Court has not entered a protective order, until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys' Eyes Only") by the disclosing party. Disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party seven (7) days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Local Patent Rule shall keep it confidential and use it only for

purposes of litigating the case.

P.R. 2.3 CERTIFICATION OF INITIAL DISCLOSURES.

All statements, disclosures, or charts filed or served in accordance with these Patent Rules must be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

P.R. 2.4 ADMISSIBILITY OF DISCLOSURES.

Statements, disclosures, or charts governed by these Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Civil Procedure. However, the statements or disclosures provided for in P.R. 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Rules must be taken.

P.R. 2.5 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE CONCERNING DISCOVERY.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Rules. A party may object, however, to responding to the following categories of discovery

requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the time requirements provided in the Patent Rules and orders of the Court:

(A) Requests seeking to elicit a party's claim construction position;

(B) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(C) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(D) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Patent Rules, unless there exists another legitimate ground for objection.

III. PATENT INITIAL DISCLOSURES

P.R. 3.1 DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS.

Not later than thirty (30) days after the entry of the Court's Scheduling Order, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing

party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(A) Each claim of each patent in suit that is allegedly infringed by each opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. § 271 asserted;

(B) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus that, when used or manufactured, allegedly results in or is made by the practice of the claimed method or process;

(C) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(D) Whether each element of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(E) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(F) If a party claiming patent infringement wishes to preserve the right to

rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

P.R. 3.2 DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying:

(A) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third-party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(B) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, that were created on or before the date of application for the patent in suit or the priority date identified pursuant to P.R. 3.1(E), whichever is earlier; and

(C) A copy of the file history for each patent in suit.

The producing party shall separately identify by production number which

documents correspond to each category.

P.R. 3.3 INVALIDITY CONTENTIONS.

Within ninety (90) days of entry of the Court's Scheduling Order, each party opposing a claim of patent infringement shall serve on all parties its "Invalidity Contentions," which must contain the following information:

(A) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(B) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(C) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(D) Any grounds of invalidity based on 35 U.S.C. §§ 101, 102, or 103, indefiniteness under 35 U.S.C. § 112(2), or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

P.R. 3.4 DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS.

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

(A) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its P.R. 3.1(C) chart; and

(B) A copy of each item of prior art identified pursuant to P.R. 3.3(A) that does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

The producing party shall separately identify by production number which documents correspond to each category.

P.R. 3.5 DISCLOSURE REQUIREMENT IN PATENT CASES FOR DECLARATORY JUDGMENT.

(A) ***Invalidity Contentions If No Claim of Infringement.*** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, P.R. 3.1 and 3.2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than thirty (30) days after entry of the Court's Scheduling Order, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to P.R. 3.3 and produce or make available for inspection and copying the documents described in P.R. 3.4.

(B) ***Applications of Rules When No Specified Triggering Event.*** If the filings or actions in a case do not trigger the application of these Patent Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Rules to the case.

(C) ***Inapplicability of Rule.*** P.R. 3.5 shall not apply to cases in which a request for a declaratory judgment is filed seeking a declaration that a patent is not infringed, is invalid, or is unenforceable in response to a complaint for infringement of the same patent.

P.R. 3.6 AMENDING AND SUPPLEMENTING CONTENTIONS.

(A) ***Leave Not Required.*** Each party's "Infringement Contentions" and "Invalidity Contentions" shall be deemed to be that party's final contentions,

except as set forth below:

(1) If the parties stipulate to serving Amended or Supplemental Infringement Contentions and Invalidity Contentions;

(2) If a party claiming patent infringement believes in good faith that the Court's Claim Construction Order so requires, not later than thirty (30) days after entry of the Court's Claim Construction Order, that party may serve "Amended Infringement Contentions" without leave of Court that amend or supplement its "Infringement Contentions" with respect to the information required by P.R. 3.1(C) and (D); or

(3) Not later than sixty (60) days after entry of the Court's Claim Construction Order, each party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" without leave of Court that amend or supplement its "Invalidity Contentions" with respect to the information required by P.R. 3.3 if:

(a) a party claiming patent infringement has served "Amended Infringement Contentions" pursuant to P.R. 3.6(A); or

(b) the party opposing a claim of patent infringement believes in good faith that the Court's Claim Construction Order so requires.

(B) ***Leave Required.*** Amendment or supplementation of any Infringement Contentions or Invalidity Contentions, other than as expressly permitted in P.R. 3.6(A), may be made only by order of the Court, which shall be entered if application is made in a timely fashion, for good cause, and without purpose of delay or undue prejudice to another party. Non-exhaustive examples of circumstances supporting a finding of good cause can include at least the following: information newly discovered or confirmed, through due diligence,

regarding an accused product or prior art; information discovered, confirmed, or provided by a party's consultant or expert after a party's contentions have been served; new product launches; amendments to the complaint or counterclaim adding or removing one or more asserted patents; and information learned from or positions taken by another party during the exchange of contentions process set forth in P.R. 3.1 to 3.5.

These Patent Rules attempt to fairly and reasonably schedule the exchange of contentions in order to provide early disclosure. The Rule allowing amendments and supplementation to infringement and invalidity contentions is intended to allow enough flexibility for legitimate changes that will not cause undue prejudice while, at the same time, prohibiting gamesmanship, bad faith, or dilatory motives. Accordingly, these Patent Rules encourage the parties to devote sufficient time and attention to their initial contentions and deter parties from deferring the disclosure, development, or investigation of theories or contentions. Examples of what may constitute "good cause" are provided for the Court and the parties in order to avoid undue motions practice and other inefficiencies when leave is warranted.

P.R. 3.7 WILLFULNESS; DISCOVERY OF OPINIONS OF COUNSEL.

By the date set forth in the Court's Pretrial Scheduling Order, each party opposing a claim of patent infringement that will rely on an opinion of counsel as part of a defense to a claim of willful infringement shall:

(A) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party

agrees the attorney-client or work product protection has been waived; and

(B) 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) that the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of P.R. 3.7 shall not be permitted to rely on an opinion of counsel as part of a defense to willful infringement absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

IV. CLAIM CONSTRUCTION PROCEEDINGS

P.R. 4.1 EXCHANGE OF PROPOSED TERMS AND CLAIM ELEMENTS FOR CONSTRUCTION.

(A) Not later than twenty-one (21) days after service of the "Invalidity Contentions" pursuant to P.R. 3.3, each party shall simultaneously exchange a list of claim terms, phrases, or clauses that the party contends should be construed by the Court, and identify any claim element that the party contends should be governed by 35 U.S.C. § 112(6).

(B) The parties shall thereafter meet and confer for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

P.R. 4.2 EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE.

(A) Not later than twenty-one (21) days after the exchange of "Proposed

Terms and Claim Elements for Construction" pursuant to P.R. 4.1, the parties shall simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause that the parties collectively have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element that any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that element.

(B) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of expert and other witnesses they contend support their respective claim constructions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, the parties shall also provide a brief description of the substance of that witness's proposed testimony.

(C) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

P.R. 4.3 JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT.

Not later than thirty (30) days after exchange of constructions pursuant to P.R. 4.2, the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(A) The construction of those claim terms, phrases, or clauses on which the

parties agree;

(B) Each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of expert and other witnesses;

(C) The necessity for, and anticipated length of time of, the Claim Construction Hearing;

(D) Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

(E) A list of any other issues that might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

P.R. 4.4 COMPLETION OF CLAIM CONSTRUCTION DISCOVERY.

Not later than thirty (30) days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim

Construction and Prehearing Statement.

P.R. 4.5 CLAIM CONSTRUCTION BRIEFS.

(A) Not later than fourteen (14) days after the close of Claim Construction discovery, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

(B) Not later than fourteen (14) days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(C) Not later than seven (7) days after service upon it of a responsive brief, the party claiming patent infringement shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

(D) Not later than seven (7) days after service upon it of a reply brief, each party opposing the claims of infringement shall file a surreply brief and supporting evidence.

(E) Seven (7) days after the filing of the surreply brief specified in P.R. 4.5(D), the parties shall jointly submit through Cyber Clerk a claim construction chart in an editable format.

(1) 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).

(2) 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.

(3) 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.

(F) Unless otherwise ordered by the Court, the page limitations governing motions pursuant to LCvR 7.1 shall apply to claim construction briefing.

P.R. 4.6 CLAIM CONSTRUCTION HEARING.

To the extent the parties believe a hearing is necessary for construction of the claims at issue, within seven (7) days following submission of the surreply brief specified in P.R. 4.5(D), the parties will jointly file a Motion for Claim Construction Hearing suggesting a time and date for such Hearing.