

FEDERAL CIRCUIT BAR ASSOCIATION®

MODEL PATENT LOCAL RULES

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Explanatory Note

These Model Patent Local Rules were drafted by the Model Patent Local Rules Subcommittee of the Federal Circuit Bar Association's[®] Patent Litigation Committee and revised by the Rules Committee. The Association has adopted these Model Patent Local Rules with the intent that they may serve as a useful guide and be flexibly evaluated in light of the trial court's discretion and the circumstances of a particular case.

PATENT LOCAL RULES

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PATENT LOCAL RULES

1. SCOPE OF RULES

1-1. Title.

These are the Local Rules of Practice for Patent Cases before the United States District Court for the [INSERT DISTRICT]. They should be cited as “Patent L.R. __.”

1-2. Scope and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Civil Local Rules of this Court shall also apply to such actions, except to the extent that they are inconsistent with these Patent Local Rules. If the filings or actions in a case do not trigger the application of these Patent Local Rules under the terms set forth herein, and any party asserts they should apply, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Local Rules to the case and promptly report the results of the meet and confer to the Court.

1-3. Modification or Waiver of these Rules.

The Court may modify or waive the obligations or deadlines set forth in any of these Patent Local Rules based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the patents, claims, products, or parties involved. Such modifications or waivers shall, in most cases, be made at the initial case management conference, but may be made at other times upon a showing of good cause. In advance of submission of any request for a modification or waiver, the parties shall meet and confer for purposes of reaching an agreement, if possible, upon any modification or waiver.

1-4. Effective Date.

These Patent Local Rules take effect on [INSERT DATE]. They govern cases pursuant to Patent L.R. 1-2 filed on or after that date. The Court may also apply all or part of these Patent Local Rules to any appropriate case pending on the effective date of these Patent Local Rules.

2. GENERAL PROVISIONS

2-1. Governing Procedure.

(a) Notice of Pendency of Other Action Involving Same Patent.

(1) When actions concerning the same patent are filed in this District within two years of each other by the same plaintiff, they will be deemed related.

(2) Whenever a party knows or learns that actions concerning the same patent have been filed in this District within two years of each other by the same plaintiff, the party must promptly file in each such case a Notice of Pendency of Other Action Involving Same Patent.

(3) The Clerk may reassign the related cases as appropriate.

(b) Initial Case Management Conference. When the parties confer pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties shall discuss and address in the Case Management Statement filed pursuant to Fed. R. Civ. P. 26(f) and [INSERT ANY APPLICABLE LOCAL RULE], the following topics:

(1) Proposed modification of the obligations or deadlines set forth in these Patent Local Rules to ensure that they are suitable for the circumstances of the particular case (*see* Patent L.R. 1-3);

(2) The scope and timing of any claim construction discovery including disclosure of and discovery from any expert witness permitted by the Court; and

(3) How the parties intend to educate the Court on the technology at issue.

2-2. Confidentiality.

[If the local rules of this District include a default authorized Protective Order:]
Discovery cannot be withheld on the basis of confidentiality absent Court order. The Protective Order authorized by this Court shall govern discovery unless the Court enters a different protective order. The approved Protective Order can be found on the Court's website.

[If the local rules of this District do not include a default authorized Protective Order:]
The parties shall meet and confer to agree upon the form of a Protective Order and move the Court for entry of such Protective Order. In order to prevent delay, the parties may produce materials on an OUTSIDE COUNSEL ONLY basis until an appropriate Protective Order is entered by the Court. Any materials produced on such a basis shall be redesignated, if necessary, pursuant to the provisions of the Protective Order subsequently entered by the Court.

2-3. Certification of Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Patent

Local Rules shall be dated and signed by counsel of record, or by the party if unrepresented, and are subject to the requirements of Fed. R. Civ. P. 11 and 26(b).

2-4. Admissibility of Disclosures.

Statements, disclosures, or charts governed by these Patent Local Rules are admissible to the extent permitted by the Federal Rules of Evidence or Federal Rules of Civil Procedure. However, the statements and disclosures provided for in Patent L.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 Local Rules shall be taken. None of the statements, disclosures, or charts governed by these Patent Local Rules are admissible to support an assertion that any later statement, disclosure or chart lacks substantive merit due to any alleged variation from an earlier version of such statement, disclosure, or chart.

2-5. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it shall not be a 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 Local Rules, absent other legitimate objection. 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 timetable provided in the Patent Local Rules:

- (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 or any claim element(s) or limitation(s) recited therein 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 or any claim element(s) or limitation(s) recited therein and the prior art; and
- (d) Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents.

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 be provided to an opposing party under these Patent Local Rules or as set by the Court, unless there exists another legitimate ground for objection.

2-6. Model Order for Electronically Stored Information (“ESI”).

[IF APPLICABLE] The Court has approved a Model Order for ESI that applies to all Patent Cases in this District unless otherwise ordered by a judge assigned to the case. The Model Order is available on the Court’s website, and may be amended by the Court from time to time as deemed appropriate.

2-7. Opportunities for Junior Lawyers.

The Court is aware that in today’s practice of law, fewer cases go to trial and there are generally fewer speaking opportunities in court, particularly for junior lawyers (i.e., lawyers practicing for less than seven years). Parties and the Court are encouraged to be mindful of opportunities for junior lawyers to argue in front of the Court, particularly for issues where the junior lawyer drafted or contributed significantly to the underlying motion or response.

2-8. Civility, Professionalism, and Ethics.

The Court expects all members of the bar practicing in patent cases, as in all other cases, to act towards each other, their clients, and the public with the civility, professionalism, and ethics that the legal profession demands.

3. PATENT DISCLOSURES^{1,2}

3-1. Disclosure of Asserted Claims and Infringement Contentions.

Not later than 14 days after the Initial Case Management Conference, a party claiming patent infringement shall 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 claiming patent infringement is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

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

(d) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, a description of the role of each such party in the direct infringement;

(e) Whether each limitation of each asserted claim is alleged to be literally present or

¹ Committee Comment: All deadlines established in Patent L.R. 3 and 4 are given in multiples of 7 days relative to an event preceding that deadline. The Committee has chosen to calculate deadlines in this way to facilitate the calculation of deadlines, so that the day of the week on which a deadline falls will be the same day of the week on which the preceding event from which the deadline was calculated fell, except if the deadline falls on a Legal Holiday as that term is defined in Fed. R. Civ. P. 6(a)(6). In that case, the deadline shall fall on the next date which is not a Legal Holiday, a Saturday, or Sunday.

² Committee Comment: In addition to requiring the disclosure of infringement and invalidity positions, some courts have begun to require the disclosure of information pertaining to damages theories, though the nature and timing of those provisions vary. *See, e.g.*, N.D. Cal. Patent L.R. 2-1(b)(5), 3-8, 3-9; W.D. Pa. LPR 3.5, 3.6; D. Utah LPR 2.2(a)(6), 2.2(b)(4). The Committee plans to monitor those provisions over time and study their effectiveness.

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present under the doctrine of equivalents in the Accused Instrumentality. For any allegation under the doctrine of equivalents, the infringement contentions must include an explanation of each function, way, and result that is alleged to be equivalent and/or why any differences are not substantial;

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

(g) 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 shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

(h) If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

3-2. Document Production Accompanying Disclosure.

With the “Disclosure of Asserted Claims and Infringement Contentions,” the party claiming patent infringement shall 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, or any public use of, 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, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3-1(f), whichever is earlier;

(c) A copy of the file history for each patent in suit;

(d) All documents evidencing ownership of the patent rights by the party asserting patent infringement; and

(e) If a party identifies instrumentalities pursuant to Patent L.R. 3-1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

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

3-3. Invalidity Contentions.

Not later than 42 days after service upon it of the “Disclosure of Asserted Claims and Infringement Contentions,” each party opposing a claim of patent infringement, shall serve on all parties its “Invalidity Contentions” which shall 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 shall be identified by its title, date of publication, and where feasible, author and publisher. Each alleged sale or public use 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 which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. For pre-AIA claims, 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. For pre-AIA claims, 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 obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

(c) A chart identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), 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, indefiniteness under 35 U.S.C. § 112(b) or enablement or written description under 35 U.S.C. § 112(a) of any of the asserted claims.³

3-4. Document Production Accompanying Invalidity Contentions.

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

³ Committee Comment: Some courts also require each party opposing a claim of patent infringement to submit noninfringement contentions in response to the infringement contentions of the party asserting patent infringement. *See, e.g.*, D. Colo. LPR 6; N.D. Ill. LPR 2.3(a); D. Mass. L.R. 16.6(d)(4)(D); D. Minn. Template Rule 26(f) Report ¶ (e)(2); N.D. Ohio L. P. R. 3.3; W.D. Pa. LPR 3.4; D. Utah LPR 2.4; W.D. Wash. Local Patent Rule 121. Certain courts also require a patent owner’s response to invalidity contentions. *See, e.g.*, D. Colo. LPR 10; D. Minn. Template Rule 26(f) Report ¶ (f)(2).

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(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 Patent L.R. 3-1(c) chart; and

(b) A copy or sample of the prior art identified pursuant to Patent L.R. 3-3(a) which 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 shall be produced.

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

3-5. Disclosure Requirement in Patent Cases for Declaratory Judgment of Invalidity.

(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 invalid, Patent L.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 14 days after the defendant serves its answer, or 14 days after the Initial Case Management Conference, whichever is later, the party seeking a declaratory judgment of invalidity shall serve upon each opposing party its Invalidity Contentions that conform to Patent L.R. 3-3 and produce or make available for inspection and copying the documents described in Patent L.R. 3-4.

(b) **Inapplicability of Rule.** This Patent L.R. 3-5 shall not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

3-6. Amendment to Contentions.

Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Nonexhaustive examples of circumstances that may, absent undue prejudice to the nonmoving party, support a finding of good cause include: (a) a claim construction by the Court different from that proposed by the party seeking amendment; (b) recent discovery of material, prior art despite earlier diligent search; and (c) recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement

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Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.^{4,5}

3-7. Advice of Counsel.

Not later than 49 days after service by the Court of its Claim Construction Ruling, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall:

(a) Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client and work product protection have been waived;

(b) Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and

(c) 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 advice which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party who does not comply with the requirements of this Patent L.R. 3-7 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or by order of the Court.

⁴ Committee Comment: This Patent L.R. 3-6 bears substantial similarity to the analogous rules of the District of New Jersey and the Northern District of California. Other courts have adopted alternative approaches to the ability to amend contentions. The Eastern District of Texas allows amendment of either party's contentions without leave when that party has a good faith belief that the court's claim construction ruling necessitates the amendment. Any party opposing a claim of patent infringement may also amend its invalidity contentions without leave after a party alleging infringement has served amended infringement contentions. In the Southern District of California, a party alleging infringement may amend infringement contentions as a matter of right until the parties file a Joint Claim Construction Chart. A party opposing infringement may amend as a matter of right until the close of claim construction discovery. The Western District of Pennsylvania provides a schedule for amendments to contentions without leave from the Court where the Court adopts a claim construction that is different from one proposed by a party.

⁵ Committee Comment: The local rules of some courts require parties to serve final contentions, such as final infringement contentions and final invalidity contentions. *See, e.g.*, N.D. Ill. LPR 3.1-3.3; N.D. Ohio L. P. R. 3.10(b)-(d); D. Utah LPR 3.1-3.3. Particularly when timed to occur after the issuance of the court's claim construction order, such final contentions may help narrow the issues before the court and avoid disputes over amendments to contentions.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms for Construction.

(a) Unless otherwise stipulated by the parties and approved by the Court, not later than 14 days after service of the “Invalidity Contentions” pursuant to Patent L.R. 3-3, not later than 42 days after service upon it of the “Disclosure of Asserted Claims and Infringement Contentions” in those actions where validity is not at issue (and Patent L.R. 3-3 does not apply), or, in all cases in which a party files a complaint or other pleading seeking a declaratory judgment not based on validity, not later than 14 days after the defendant serves an answer that does not assert a claim for patent infringement (and Patent L.R. 3-1 does not apply), each party shall serve on each other party a list of claim terms which that party contends should be construed by the Court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112(f).

(b) The parties shall thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties shall also jointly identify up to 10 terms likely to be most significant to resolving the parties’ dispute, including those terms for which construction may be case or claim dispositive or substantially conducive to promoting settlement.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) Unless otherwise stipulated by the parties and approved by the Court, not later than 21 days after the exchange of the lists pursuant to Patent L.R. 4-1, the parties shall simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each such “Preliminary Claim Construction” shall also, for each term which any party contends is governed by 35 U.S.C. § 112(f), identify the structure(s), act(s), or material(s) corresponding to that term’s function.

(b) At the same time the parties exchange their respective “Preliminary Claim Constructions,” each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party shall also provide a description of the substance of that witness’ proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.⁶

(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.

⁶ Committee Comment: At this stage of the disclosures, it is only necessary that the parties identify the general substance of any proffered testimony from an expert or percipient witness.

4-3. Joint Claim Construction and Prehearing Statement.

Unless otherwise stipulated by the parties and approved by the Court, not later than 28 days after the exchange of “Preliminary Claim Constructions” pursuant to Patent L.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 terms on which the parties agree;
- (b) Each party’s proposed construction of each disputed term, 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 or to oppose any other party’s proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;⁷
- (c) An identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of ten. The parties shall also identify any term among the 10 whose construction will be case or claim dispositive or substantially conducive to promoting settlement.⁸ If the parties cannot agree on the ten most significant terms, the parties shall identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant shall not exceed ten. For example, in a case involving two parties, if the parties agree upon the identification of five terms as most significant, each may only identify two additional terms as most significant; if the parties agree upon eight such terms, each party may identify only one additional term as most significant;⁹

⁷ Committee Comment: At this stage of the disclosures, declarations from fact or expert witnesses are required. No declaration is required for any third-party witnesses providing testimony subject to a subpoena. Identification of relevant deposition testimony from any such witness meets the requirements of this subsection. Deposition testimony of witnesses submitting declarations or reports should be completed per Patent L.R. 4-4. Some courts require disclosure of expert testimony in a formal expert report served on the other party. *See, e.g.*, N.D. Cal. LPR 4-3; E.D. Tex. LPR 4-3(b).

⁸ Committee Comment: The Court may prefer to be informed of the reasons why a claim term is significant to the resolution of the case. In such circumstances, the Court may include the following provision in its local patent rules: “For each term identified as most significant to the resolution of the case, the parties shall briefly identify the basis for asserting that the term is significant including, for example, whether the construction of the term impacts infringement, invalidity, or damages issues.”

⁹ Committee Comment: This rule is not intended to limit the number of terms for the Court to construe or the number of disputed claim terms. The purpose of this rule is to identify for the Court the terms that are most significant to resolution of the case. Terms need not be claim or case

(d) The anticipated length of time necessary for the Claim Construction Hearing;¹⁰

(e) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction;¹¹

(f) Whether the parties believe a technology tutorial is needed and, if so, the proposed scope, format, and timing of any such tutorial.¹²

4-4. Completion of Claim Construction Discovery.

Unless otherwise stipulated by the parties and approved by the Court, not later than 28

dispositive in order to be significant. For example, a claim term whose construction affects the damages claim may be significant to resolution of the case.

In addition, there is no requirement that the parties identify ten significant terms. It is expected that the parties will only identify terms meeting the specified requirements, thus making the identification of fewer than ten terms appropriate in some cases. Failure to identify a claim term under this sub-provision as “most significant” does not diminish the need for construction of any such term.

In appropriate cases, it may be desirable to increase the number of terms identified as being most significant to the resolution of the case, particularly, for example, in cases involving complex technology with multiple patents and multiple asserted claims. An adjustment of the number of terms identified as significant should be determined on a case-by-case basis.

¹⁰ Committee Comment: Claim Construction Hearings are often beneficial for district courts. Such hearings typically range from one hour to a full day, depending upon the preferences of the court, the number and complexity of the issues, and whether the court permits testimony from percipient and expert witnesses at the hearing.

¹¹ Committee Comment: The Court should determine on a case-by-case basis whether to permit live witness testimony at a Claim Construction Hearing. In some cases, the submission of witness statements and deposition testimony is sufficient and there is no need for percipient and expert witness testimony. In others, it may be beneficial for the Court to receive live witness testimony.

¹² Committee Comment: Technology tutorials can take many forms, including a jointly prepared non-argumentative presentation with voice-over narration, in-court presentations by expert witnesses, or in-court presentations by the attorneys for each party. Depending on the Court’s preference, such presentations can occur in advance of or on the same day as the Claim Construction Hearing.

One advantage to a jointly prepared presentation with voice-over narration is that the Court can review the presentation in advance of the Hearing and maintain a copy of the presentation for its reference throughout the case. A live tutorial provided in advance of a Hearing can provide a similar advantage.

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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 Preliminary Claim Construction statement (Patent L.R. 4-2) or Joint Claim Construction and Prehearing Statement (Patent L.R. 4-3).

4-5. Claim Construction Briefs.¹³

(a) Not later than 28 days after filing and serving the Joint Claim Construction and Prehearing Statement, the parties shall simultaneously file and serve their opening briefs and any supporting evidence.

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

4-6. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, 28 days following submission of the responsive briefs specified in Patent L.R. 4-5(b), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

4-7. Good Faith Participation.

A failure to make a good faith effort to narrow the instances of disputed terms or otherwise participate in the meet and confer process of any of the provisions of Section 4 may expose counsel to sanctions, including under 28 U.S.C. § 1927.

¹³ Committee Comment: This Model Patent L.R. 4-5 contemplates the parties filing simultaneous claim construction briefs. Some courts instead require staggered (i.e., opening-responsive-reply) briefs more typical of traditional motion practice. In the Committee's view, simultaneous briefing is preferable. Unlike a traditional motion, with one party seeking relief from the Court and the other party opposing, in claim construction both parties ordinarily seek constructions from the Court. Accordingly, a briefing schedule allowing one party to file the first and last brief may be less appropriate for claim construction. Moreover, given the requirement of pre-briefing claim construction disclosures, each party's position is known to the other party prior to the filing of the opening briefs, and simultaneous briefing thus provides each party a balanced opportunity to argue its position affirmatively and to respond to the opposing party's position.

APPENDIX

The Federal Circuit Bar Association intends for these Model Rules to be interpreted flexibly by trial courts in light of their experience and discretion. To aid trial courts in evaluating these Model Rules, this Appendix lists webpages from which the patent local rules of various U.S. District Courts are obtainable.

Northern District of California

<http://www.cand.uscourts.gov/localrules/patent>

Southern District of California

<https://www.casd.uscourts.gov/rules/local-rules.aspx>

District of Colorado

<http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/LocalRules/PatentLocalRules.aspx>

Northern District of Georgia

<http://www.gand.uscourts.gov/sites/default/files/NDGARulesPatent.pdf>

District of Idaho

https://www.id.uscourts.gov/district/forms_fees_rules/Patent_Rules.cfm

Northern District of Illinois

<http://www.ilnd.uscourts.gov/LocalRules.aspx>

Northern District of Indiana

<http://www.innd.uscourts.gov/court-info/local-rules-and-orders>

District of Kansas

<http://www.ksd.uscourts.gov/wp-content/uploads/2017/07/Patent-Local-Rules-8-14-17.pdf>

District of Maryland

<http://www.mdd.uscourts.gov/sites/mdd/files/LocalRules.pdf>

District of Massachusetts

<https://www.mad.uscourts.gov/general/pdf/LC/Combined%20Local%20Rules.pdf>

Eastern District of Missouri

https://www.moed.uscourts.gov/sites/moed/files/documents/local-rules/Patent%20Rules.EDMO_.pdf

Western District of Missouri

<https://www.mow.uscourts.gov/sites/mow/files/Patent-Local-Rules-with-Scheduling->

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Orders.pdf

District of Nevada <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf>

District of New Hampshire
<https://www.nhd.uscourts.gov/local-rules-0>

District of New Jersey
<http://www.njd.uscourts.gov/sites/njd/files/completelocalRules.pdf>

Northern District of New York
<https://www.nynd.uscourts.gov/content/local-rule-patent>

Southern and Eastern Districts of New York
https://www.nysd.uscourts.gov/sites/default/files/local_rules/rules-2018-10-29.pdf

Western District of New York
https://www.nywd.uscourts.gov/sites/nywd/files/2019%20patent%20rules_0.pdf

Eastern District of North Carolina
<http://www.nced.uscourts.gov/rules/>

Middle District of North Carolina
<https://www.ncmd.uscourts.gov/local-rules-and-orders>

Western District of North Carolina
<http://www.ncwd.uscourts.gov/court-info/local-rules-and-orders/local-patent-rules>

Northern District of Ohio
<https://www.ohnd.uscourts.gov/local-patent-rules>

Southern District of Ohio
<http://www.ohsd.uscourts.gov/local-rules>

Western District of Pennsylvania
<http://www.pawd.uscourts.gov/court-info/local-rules-and-orders/local-rules>

Western District of Tennessee
<https://www.tnwd.uscourts.gov/pdf/content/LocalPatentRules.pdf>

Eastern District of Texas
<http://www.txed.uscourts.gov/?q=patent-rules>

Southern District of Texas
<http://www.txs.uscourts.gov/page/district-local-rules-practice-patent-cases>

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District of Utah

<https://www.utd.uscourts.gov/rules-practice>

Eastern District of Washington

<https://www.waed.uscourts.gov/local-patent-rules>

Western District of Washington

<http://www.wawd.uscourts.gov/sites/wawd/files/LRPatentRules-Final.pdf>