

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

STANDING ORDER IN CIVIL CASES

JUDGE LARRY ALAN BURNS
Courtroom 9, 2nd Floor

1. LOCAL RULES

Except as otherwise provided in this Standing Order or as ordered by the Court, all parties are expected to strictly adhere to the Local Rules of this District.

2. DISCOVERY

Pursuant to Civil Local Rules 26.1(e) and 72.1(b), discovery matters are generally handled by the assigned Magistrate Judge. The words “**DISCOVERY MATTER**” shall appear in the caption of all documents relating to discovery to ensure proper routing. Counsel shall contact the law clerk of the assigned Magistrate Judge to schedule hearings on discovery matters.

3. SETTLEMENT

a. Any stipulation for dismissal presuming the Court will retain jurisdiction will be rejected unless: (1) it is accompanied by a Consent to Exercise of Jurisdiction by a United States Magistrate Judge over all disputes arising out of the settlement agreement, including interpretation and enforcement of the terms of the settlement agreement, *signed by all parties and their counsel*; and (2) it includes in the stipulation text and in the proposed order the following language:

The Magistrate Judge shall retain jurisdiction over all disputes between and among the parties arising out of the settlement agreement, including but not limited to interpretation and enforcement of the terms of the settlement agreement.

b. Class Actions: Any proposed order for preliminary approval of class certification or preliminary settlement approval will be rejected unless accompanied by an affidavit and memorandum of points and authorities establishing all requirements have been satisfied, including the class certification factors and fairness factors. If the proposed order also seeks approval of class notice, the affidavit and memorandum of points and authorities shall also address compliance with all applicable procedural rules and statutory provisions.

4. MOTIONS

a. Time of Filing and Service of Moving Papers: Regardless of the motion hearing date, the moving party shall file all moving papers within three court days of obtaining the hearing date from chambers, or within the time provided by Civil Local Rule 7.1(e)(1), whichever is earlier. The moving papers shall be served at the time of filing.

b. Points and Authorities: In their memoranda of points and authorities, the parties shall state all legal and factual bases for their respective positions. An opposing party's failure to file a memorandum of points and authorities in opposition to any motion will be construed as consent to granting the motion.

c. Lodgments of Exhibits: The party lodging exhibits pursuant to Civil Local Rule 1.1(e)(15), shall provide an original and one copy for the Court's use as provided in Civil Local Rule 5.1(i)(1).

d. Audio or Video Exhibits: Any party desiring to rely on audio or video materials as exhibits to his or her motion papers, shall contemporaneously file a transcript of the audio or video materials. The transcript shall either be certified by a court reporter or stipulated to by the opposing party. Any audio or video materials not complying with these requirements will be rejected.

e. Summary Judgment/Adjudication: In any pending motion for summary judgment or summary adjudication, no later than ten court days prior to the date of the hearing, the parties are ordered to meet, confer and submit a Joint Statement of Undisputed Facts. Only one joint statement of undisputed facts, signed by all parties, shall be filed. Statements of undisputed facts not jointly submitted will be rejected. Any objections to evidence filed in support of the moving party's reply shall be served and filed no later than three court days prior to the date initially set for hearing.

f. Oral Argument: The Court may hear oral argument on motions in appropriate cases when specifically requested by a party. When oral argument is granted, the Court will notify the parties at least three days before the scheduled hearing. In cases in which oral argument is not granted by the Court, the matter will be considered submitted for decision on the papers pursuant to Civil Local Rule 7.1(d).

g. Argument by Telephonic Conference: Any requests for argument by telephonic conference pursuant to Civil Local Rule 7.1(d)(3) shall be made no later than three court days before the scheduled hearing.

h. Americans With Disability Act Cases: No hearing dates for Motions For Summary Judgment or for Preliminary Injunctions will be given in ADA cases until after the Early Neutral Evaluation Conference has occurred.

i. Amicus Curiae Briefs: The court discourages requests to file *amici curiae* briefs for the reasons discussed in Voices For Choices v. Illinois Bell Telephone Co., 339 F.3d 542 (7th Cir. 2003). Counsel must obtain leave before submitting such a brief for the court's consideration.

j. Applications for Reconsideration: **Motions for reconsideration are disfavored unless a party shows there is new evidence, a change in controlling law, or establishes that the Court committed clear error in the earlier ruling.** No motion for reconsideration will be filed without leave of Court. No later than the time provided in Civil Local Rule 7.1(i)(2), the party desiring to move for reconsideration shall file an *ex parte* application for leave to file a motion to reconsider. The *ex parte* application shall be accompanied by a declaration as required by Civil Local Rule 7.1(i)(1). The *ex parte* application shall contain a brief summary of the argument the party intends to present in a motion for reconsideration, and shall not exceed five pages in length. Upon review of the *ex parte* application, the Court will either issue an order granting leave to file a motion for reconsideration, including a briefing schedule, or an order denying leave.

5. TEMPORARY RESTRAINING ORDERS/ MOTIONS FOR EMERGENCY RELIEF

All motions for temporary restraining orders or other emergency relief shall be briefed. While temporary restraining orders may be heard *ex parte*, the Court will do so only in extraordinary circumstances. The Court's strong preference is for the opposing party to be served, and afforded a reasonable opportunity to file an opposition. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing on the issue. The Court will generally give notice of hearing by telephone.

6. MARKMAN HEARINGS AND TUTORIAL SESSIONS

a. Hearing Dates: All hearing dates for *Markman* hearings and tutorial sessions shall be obtained from the clerk of the judge to whom the case is assigned. Typically, the tutorial session and *Markman* hearing will be held on the same date, with the tutorial session immediately preceding the *Markman* hearing.

b. Meeting and Conference: Prior to filing any papers for the tutorial session and *Markman* hearing, parties shall meet and confer for purposes of arriving at an agreed

construction for as many claims as possible, assembling a Joint Appendix of Exhibits, and, if possible, preparing of a joint tutorial session.

c. Time of Filing: No later than two weeks before the hearing date, parties shall file a Joint Claim Construction Chart, Joint Appendix of Exhibits, and, if necessary, claim construction briefs. Courtesy copies of all papers filed for the tutorial session and *Markman* hearing shall be submitted to chambers no later than two weeks before the hearing date.

d. Joint Appendix of Exhibits: To avoid unnecessary duplication of exhibits, parties shall file a Joint Appendix of Exhibits. Where five or more exhibits are filed, or where exhibits exceed five hundred pages, the courtesy copy of exhibits shall be submitted in three-ring binders with side tabs, accompanied by an index.

e. Joint Claim Construction Chart: The Joint Claim Construction Chart shall be prepared on legal-sized paper in landscape format. The chart shall consist of five columns: (1) the verbatim claim language; (2) the agreed construction, if any; (3) the plaintiff's proposed construction; (4) the defendant's proposed construction; and (5) a blank column for the Court's use. The chart shall number the claims (1, 2, 3, *etc.*) and label each claim limitation with a letter (a, b, c, *etc.*). (For a good example, parties may refer to the Joint Claim Construction Chart filed in *QUALCOMM, Inc. v. Conexant Sys., Inc. et al.*, case no. 02cv2002 B (JFS), filed Sept. 27, 2004.)

f. Tutorial Session: Parties will have an opportunity to present a tutorial session on the record to educate the Court. They shall address solely the technology of the patent subject matter (*i.e.*, not the product). The tutorial session is not a forum for legal argument, and, where possible, the parties should jointly present the tutorial.

g. Electronic, Video or Audio Equipment: Parties shall notify the courtroom deputy **at least five court days in advance** of the tutorial session or *Markman* hearing of any electronic, video or audio equipment they intend to use, and shall prepare and submit to the Court a draft order authorizing the use in the courtroom of all such equipment.

7. REQUESTS TO SEAL DOCUMENTS

Before submitting any document for filing under seal as provided by Civil Local Rule 79.2(c), a party must make an *ex parte* application for leave to file documents under seal. The application must address pertinent legal authorities.

8. *EX PARTE* APPLICATIONS AND MISCELLANEOUS ADMINISTRATIVE REQUESTS

Before filing any *ex parte* application, counsel shall meet and confer in an attempt to informally resolve the issue. All miscellaneous administrative requests and *ex parte* applications are considered on the papers and may not be set for a hearing. Any *ex parte* application must be supported by a declaration, must certify the parties have met and conferred, and must make the required showing according to the applicable legal standard. Unless expressly provided otherwise herein, or in the Local Rules, this Court will consider *ex parte* applications only when a basis for extraordinary relief is shown. Sanctions may be imposed for misuse of *ex parte* applications. Any *ex parte* application filed with the Court shall be served on the opposing counsel via facsimile or overnight mail. *Ex parte* applications not opposed within two court days will be considered unopposed and may be granted on that ground.

9. OBJECTIONS TO MAGISTRATE JUDGES' DECISIONS

a. Non-Dispositive Matters Pursuant to 28 U.S.C. § 636(b)(1)(A): A party objecting to a Magistrate Judge's order shall file objections as provided in Federal Rule of Civil Procedure 72. Upon receipt of objections, the Court will issue a briefing schedule and set a hearing date, if appropriate.

b. Reports and Recommendations Pursuant to 28 U.S.C. § 636(b)(1)(B): A party objecting to a Magistrate Judge's Report and Recommendation shall file objections, if any, within the time provided in the Report and Recommendation. Any response or reply brief must be filed within the time specified therein. If no briefing schedule is specified in the Report and Recommendation, the objecting party shall follow the time limits provided in section 636(b). The Court will set a briefing schedule upon receipt of timely objections.

10. CONTINUANCES

Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes, shall meet and confer prior to making any requests to the Court. If an agreement is reached, the parties shall submit a stipulation and proposed order (*see* Civil Local Rule 7.2). If no agreement is reached, the requesting party shall file an *ex parte* application as provided herein. Any request for a continuance, whether stipulated or not, shall state: (1) the original date; (2) the number of previous requests for continuance; (3) whether previous requests were granted or denied; (4) a showing of good cause particularly focusing upon evidence of diligence by the party seeking delay and of prejudice that may result if a continuance is denied; (5) if applicable, the reasons stated by the opposing

party for refusing to consent; and (6) whether the requested continuance affects other case management dates.

Except in extraordinary circumstances, stipulations to amend a briefing schedule or to continue a motion hearing date must be filed no later than three court days before the affected date.

Unless otherwise ordered by the Court, the rescheduling of a motion hearing date does not change the date on which an opposition brief or reply brief is due; any opposition and reply briefs remain due on the dates provided in Civil Local Rule 7.1(e), calculated based on the date initially set for hearing.

11. *PRO SE* PRISONER CASES

In cases involving *pro se* prisoners as litigants, the Court expects defense counsel and the government entity with which a defendant is associated to cooperate in facilitating the prisoner's telephonic appearances or personal appearances for any scheduled conference, hearing or trial. This responsibility includes preparing any writs of *habeas corpus ad testificandum* for the incarcerated *pro se* plaintiff and any of his or her incarcerated witnesses, as authorized by the Court.

12. PRETRIAL CONFERENCES AND PREPARATION FOR TRIAL

a. Memorandum of Contentions of Fact and Law: The requirement to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule 16.1(f) is waived. The parties shall instead focus their efforts on timely drafting and submitting a proposed pretrial order as provided by Civil Local Rule 16.1(f).

b. Proposed Pretrial Order: Civil Local Rule 16.1(f) provides detailed instructions for the preparation of a proposed pretrial order. The Court expects parties to strictly adhere to these instructions, and to include in the proposed pretrial order all required information and any other issues relevant to the trial. In addition, in jury trial cases, the parties are encouraged to stipulate to a non-unanimous verdict. To this end, the parties shall include in their proposed pretrial order a statement indicating whether they will stipulate to the following:

- (a) The Court will impanel eight jurors – six regular jurors and two alternates;
- (b) At the end of the trial, all remaining jurors will be entitled to vote;
- (c) The verdict need not be unanimous, but may be decided as follows:

8 of 10
7 of 9
6 of 8
5 of 7
4 of 6

Failure to comply or cooperate in complying with the Civil Local Rules and this directive regarding the proposed pretrial order may result in sanctions.

c. Pretrial Conference: In addition to the issues listed in Civil Local Rule 16.1(f), counsel should arrive prepared to discuss the following: (1) scheduling; (2) order of proof and reasonable time limits; (3) questions relating to proof, such as stipulations of fact, stipulations to the authenticity of documents, foundation and admissibility of documentary evidence and depositions, advance rulings on admissibility of evidence, if appropriate, and any anticipated motions *in limine*; (4) bifurcation or separate trial if necessary or appropriate; (5) any need for special procedures to deal with complex issues or multiple parties; (6) need for interpreters or any other special needs; (7) issues of foreign law that reasonably would be expected to be a part of the proceedings (notice of such issues and contentions about the applicability of foreign law must be provided no later than the pretrial conference and should be incorporated in the proposed pretrial order to give the parties ample opportunity to marshal resources and evidence or experts pertinent to the foreign law issues); and (8) elimination of frivolous claims and defenses before trial.

d. Trial Date and Time Limits: A trial date will typically be set at the pretrial conference. In consultation with counsel at the pretrial conference, the Court will generally set reasonable time limits for the trial. The time limits will reflect the estimates of counsel, but will also be based on the Court's independent assessment of the time necessary to complete the trial. When set by the Court, time limits are all-inclusive, including the jury instructions conference, jury selection, opening statements, argument, and any other matters that occur over the course of the trial. Time limits are subject to modification for good cause shown.

e. Motions *in Limine*: Before filing any motion *in limine*, parties shall meet and confer and attempt to resolve their disputes. The Court will typically set a briefing schedule and hearing date for motions *in limine* at the pretrial conference. If no separate briefing schedule is ordered by the Court, any motion *in limine* shall be filed and served no later than six weeks before the date initially set for trial, and shall include the counsel's affidavit certifying the parties have met and conferred. Any opposition shall be filed and served no later than five weeks before the date initially set for trial. Any reply shall be filed and served no later than four weeks before the date initially set for trial. Parties should not present

summary judgment motions or motions to dismiss under the label of motions *in limine* as the Court will not rule on any such motions presented in that fashion.

f. Trial Briefs: In bench trial cases, trial briefs shall be served and filed no later than 14 calendar days before the date initially set for trial. In addition to the provisions in Civil Local Rule 16.1(f), the trial briefs shall analyze the legal basis for each cause of action, request for relief and defense to be tried.

g. Final Witness and Exhibit Lists: **No later than five court days before trial**, the parties shall exchange and submit to chambers their final witness and exhibit lists. Each party shall submit one extra copy of the witness list (for the court reporter), and two extra copies of the exhibit list (for the court reporter and the courtroom deputy). Unless otherwise ordered by the Court, the final witness and exhibit lists shall not contain any witnesses or exhibits which were not included in the pretrial order. For bench trials, the parties shall also deliver to chambers the bench copy of their exhibits no later than five court days before trial.

h. Joint Statement of the Case: **No later than five court days before trial**, the parties shall submit to chambers a **joint** brief description of the case to be read to the jury.

i. Proposed Jury Instructions:

(a) The parties are required to **jointly** file one set of agreed-upon instructions **no later than ten court days before the date initially set for trial**. To this end, parties shall exchange their proposed jury instructions **at least three weeks before the date initially set for trial**. The parties shall then meet and confer to prepare the agreed-upon set of instructions.

(b) If the parties cannot agree upon one complete set of instructions, they shall jointly file one set of those instructions they have agreed upon, and each party shall file and serve **no later than ten court days before the date initially set for trial** a supplemental set of instructions not agreed upon, together with all objections raised to the opposing party's proposed instruction on the same issue. Any objection shall set forth the objected-to instruction in its entirety, identify the objected-to portion(s), provide legal authority explaining why the instruction is improper, and include a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit an alternative instruction covering the subject or legal principle at issue.

(c) Additional jury instructions may be filed and served as soon as the need for them becomes apparent.

(d) The Court prefers to use form instructions, such as the Ninth Circuit model instructions, BAJI or CACI where applicable. Any proposed modifications from the statutory law or form instructions must clearly delineate each modification and state the reason or authority for it.

(e) The parties shall submit directly to chambers two copies of any jury instructions in the following format:

(i) **Faxed copies of jury instructions will be rejected.**

(ii) All proposed instructions shall be double-spaced and printed in 14 point Times New Roman font.

(iii) The first copy shall state the instruction, its source, and the authority supporting the instruction.

(iv) The second copy shall contain only the proposed instruction with no other marks or writing except for the heading "COURT'S INSTRUCTION NO. ____" with the number left blank. It shall be typed in 14 point Times New Roman font, double-spaced, and printed on plain, unlined, unnumbered paper.

(v) All instructions should be short, concise and neutral statements of the law. Argumentative instructions will not be given and should not be submitted.

(vi) All counsel will be provided with a copy of the final instructions before the Court reads them to the jury.

j. Electronic, Video or Audio Equipment: Parties shall notify the courtroom deputy **at least five court days before trial** of any electronic, video or audio equipment they intend to use during trial, and prepare and submit to the Court a draft order authorizing the use in the courtroom of all such equipment.

k. Jury Selection: Unless authorized by the Court, parties should not submit jury questionnaires. The courtroom deputy will provide counsel with a list of the jury panel in random order before *voir dire*.

The courtroom deputy will seat all prospective jurors (20 prospective jurors will generally be summoned for civil cases). The Court will conduct the initial jury *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

After *voir dire* of the entire panel has been completed, counsel may make any challenges for cause at side bar. If a challenge for cause is sustained, the excluded panelist will remain in his or her seat for the time being.

Counsel will next exercise peremptory challenges using the “Double Blind Method,” whereby the parties simultaneously exercise their challenges.

After each side has exercised its peremptory challenges, the first eight persons not challenged peremptorily or successfully challenged for cause shall constitute the jury. All remaining prospective jurors will be excused at that time.

13. TRIALS

The Court expects counsel and witnesses to be on time.

a. Witnesses: All counsel shall make every effort to have their witnesses available all day on the day the witnesses are to testify. The Court will attempt to accommodate witnesses’ schedules and will generally permit witnesses to testify out of sequence, if necessary. Counsel shall anticipate the need for witnesses to be available and, if there is any question, discuss it with opposing counsel or with the Court. Counsel shall promptly alert the Court to any scheduling problems involving witnesses.

b. Exhibits: **Before the court session in which an exhibit is to be referred to or offered in evidence, the exhibit shall be pre-marked for identification in the lower right corner using labels available from the Clerk’s Office.** Exhibits must be admitted in evidence before they are displayed to the jury.

Any party seeking monetary damages shall prepare a summary of the documentary evidence supporting the claim for monetary damages (e.g., medical bills, accounts, etc.).

c. Deposition Transcripts: The following guidelines shall apply to deposition testimony offered in evidence: Before trial commences, the parties shall meet and confer, agree on and designate all deposition testimony intended to be read into evidence. The proponent of deposition testimony shall prepare a clean copy of the excerpted testimony, indicating the beginning and ending page and line numbers. This shall be given to the Court and placed in the record. The court reporter will not be required to transcribe the deposition testimony as it is read.

d. Audio and Video Presentations: The procedures set forth above for admitting deposition transcripts shall apply. The proponent of any audio or video testimonial evidence shall prepare a written transcript of the evidence. Before trial commences, the parties shall

meet, confer, and agree on a stipulated transcript. If the parties cannot agree, each side shall prepare and submit to the Court prior to trial its own version of the disputed portion of the audio or video testimonial evidence.

e. Bench Conferences: Sidebar conferences are discouraged. Requests to speak to the Court outside the jury's presence should be made at the start of a recess or at the end of the trial day. The Court will not grant requests for conferences out of the jury's presence at the beginning of the trial day or following a recess.

f. Jury Fees: The expense of empaneling a jury for a trial shall be taxed equally to the parties if the case settles after a jury has been summoned.

14. COMMUNICATION WITH THE COURT OR CHAMBERS

Consistent with Civil Local Rule 83.9, attorneys and parties shall refrain from writing letters or placing telephone calls to the Court or sending the Court copies of letters addressed to others, or otherwise causing unauthorized *ex parte* communications with the Court. Instead, all matters for the Court's attention shall be formally submitted in compliance with the Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

Absent unavoidable circumstances, counsel shall **personally** initiate any authorized communications with the Court or with chambers staff, rather than rely on a representative (*e.g.*, a secretary or paralegal).

Any authorized telephonic communications with the Court or chambers staff regarding disputed issues must be initiated with all concerned counsel on the line.

15. NOTICE OF THIS ORDER

Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of these requirements upon defendant's counsel, or defendant, if appearing on his or her own behalf. If the action came to the Court via a noticed removal, this burden falls to the removing defendant.