

BRIEFING GUIDELINES IN COMPLEX CASES

(Revised 12/3/2013)

I. Universal Guidelines

(a) All briefs and appendices shall comply with LR 5.1.1 and LR 7.1.3. Failure to comply with these rules, including font size¹ and formatting, may result in the court's rejection of the brief pursuant to LR 5.1.2.

(b) Notwithstanding the fact that the parties file a majority of their papers under seal, the court's opinions are, generally, public documents. The parties should specifically identify in their papers particular information deemed trade secret or otherwise highly sensitive information for the court's consideration.

(c) Failure to particularize confidentiality concerns with the parties' briefing or, alternatively, within 5 days of the issuance of the court's opinion, results in a waiver to objections regarding the public accessibility to the entirety of the opinion.

(d) All appendices filed with the court shall include a table of contents at the forefront of each volume. The table of contents shall include, at a minimum, a brief description of the document, the original pagination or deposition exhibit number, and the new appendix pagination (e.g., A-123).

(e) Deposition transcripts must be provided in minuscrit form. Excerpts contained in appendices must include at least the full page before and after the testimony cited for context.

(f) Whenever possible, the parties should provide the **Westlaw** or **LexisNexis** publication number for unreported decisions.

(g) All summary judgment motions must be filed timely. **Motions to extend such deadlines generally will result in the parties' losing their trial date.**

II. Patent Cases: Claim Construction

(a) **Parties confer.** A joint claim construction chart shall be submitted to the court as provided by the scheduling order. In connection with preparing their submission, the parties shall confer on the areas of substantive dispute in order to facilitate streamlined claim construction briefing.

(b) **Briefing schedule.** In lieu of simultaneous briefing, the parties will present their issues of claim construction to the court according to the following schedule. Plaintiff² shall submit its opening brief as provided by the scheduling order. Thereafter, defendant shall submit an answering brief on the regularly scheduled due date for such

¹ Specifically, 12-point type or higher, for text as well as footnotes.

² For purposes of this form, "plaintiff" shall refer to the patentee, in the case of a declaratory judgment action.

an answer. Following plaintiff's reply, defendant shall be permitted to file a surreply brief 7 days from the filing of the reply brief.

(c) **Page limits.** No opening claim construction brief shall exceed 30 pages. No answering brief shall exceed 30 pages. No reply brief shall exceed 15 pages. Plaintiff's surreply shall not exceed 15 pages. These limits are exclusive of tables of contents and citations.³ All briefs shall otherwise comply with LR 5.1.1 and LR 7.1.3 and appendices must comport with the court's guideline in section **IV.** below.

(d) **Terms to be construed.** It is the court's practice to construe only those terms identified by the parties as disputed terms (in the joint claim construction statement or claim chart) for purposes of the summary judgment practice in jury trials.

(e) **Subject to amendment.** The claim construction that flows from summary judgment is subject to amending by the court. Should the parties thereafter focus on words that were previously unidentified to the court, or otherwise backpeddle from the court's current construction, the court will construe the new term(s) as needed and may clarify, revise, expand or narrow its prior constructions of previously-identified terms in connection with this exercise up until the case goes to the jury.

III. Patent Cases: Summary Judgment

(a) **Issues which may be briefed.** Each party may present one motion relating to infringement and one motion relating to validity. The court will not address multiple motions relating to different bases for these claims. The court will no longer address inequitable conduct on summary judgment (consistent with the court's practice with bench trials), unless the issue of inequitable conduct can be resolved on stipulated facts.⁴

(b) **Briefing guidelines on cross-motions.** Briefing shall be limited to 4 (as compared to 6) briefs on the issues of infringement and validity: (1) an opening brief filed by the party carrying the burden of proof; (2) a combined opening-answering brief filed by the respondent; (3) a combined answering-reply brief; and (4) a surreply brief. A standard briefing schedule (3 briefs) shall apply in the absence of a cross-motion.

(c) **Page limits.** The following page limits apply to all briefing provided under the court's revised guidelines: opening briefs (40 pages); combined opening-answering brief (60 pages); answering brief (40 pages); combined answering-reply brief (40 pages); reply brief (20 pages); surreply brief (where permitted, 20 pages). That is, on one motion, the briefs will be 40, 40 and 20 pages, respectively; on cross-motions, the

³ Absent prior consent, the court will not grant leave to exceed these page limitations; the court will automatically deem pages in excess of these limitations stricken from the record.

⁴ Should this be the case, the parties shall file a joint request for leave to file summary judgment briefing on the issue of inequitable conduct. Prior to granting such a request, the court may require the submission of stipulated facts upon which its decision will be based.

briefs will be 40, 60, 40 and 20 pages, respectively. These limits are exclusive of tables of contents and citations.⁵ All briefs and appendices shall otherwise comply with LR 5.1.1 and LR 7.1.3.

IV. Appendices: Claim Construction (Patent Cases) and Summary Judgment (All Complex Cases)

(a) **Claim construction briefs in patent cases** shall be accompanied by a joint appendix containing the patent(s) at issue and the file wrapper(s).

(b) **Page limits.** No more than **1000** pages of appendices total (exclusive of patents and file wrappers) may be provided by each party.⁶

V. Bench Trial Procedures

(a) **Content generally.** Briefing that follows a bench trial shall proceed as follows, consistent with the format for closing argument at a jury trial: (1) the party having the burden of proof on an issue shall file an opening brief that contains a statement of facts and argument as to the application of the relevant law to the facts; (2) the opposing party shall file its responsive brief, containing a statement of counter-facts and argument as to the application of the relevant law to the facts; and (3) the party having the burden of proof may file a reply brief.

(b) **Format.** No opening or answering brief shall exceed 60 pages, and no reply brief shall exceed 30 pages, in each instance, exclusive of tables of contents and citations.⁷ All briefs and appendices shall otherwise comply with LR 5.1.1 and LR 7.1.3.

(c) **Schedule.** Counsel should address the timing of post-trial submissions with the court at the close of trial. If the parties cannot agree to a schedule to submit the above papers within a reasonable time, the following schedule shall be effective: (1) the opening brief(s) shall be due within 90 days of the filing of the last trial transcript; (2) the responsive brief(s) shall be due within 60 days thereafter; and (3) the reply brief(s) shall be due within 30 days of the responsive briefs.

(d) **Specific rules for content.**

⁵ Absent prior consent, the court will not grant leave to exceed these page limitations; the court will automatically deem pages in excess of these limitations stricken from the record.

⁶ The court presumes the parties will provide single-sided exhibits, otherwise, the parties are limited to 500 pages of double-sided exhibits. Deposition transcripts must be provided in minuscrit form.

⁷ Absent prior consent, the court will not grant leave to exceed these page limitations; the court will automatically deem pages in excess of these limitations stricken from the record.

(i) Only **admitted trial exhibits** should be relied upon in post-trial briefing.

(ii) Parties should not submit appendices with post-trial briefing. Admitted trial exhibits shall be identified by exhibit number (PTX-, DTX- or JTX-). The trial transcripts are given docket item numbers and should be referred to by this designation, e.g., D.I. 400 at 123:1-10.

(iii) If evidence admitted at trial is not specifically addressed in the parties' post-trial submissions, it shall be deemed stricken from the record.

(iv) The original admitted exhibits addressed in the post-trial submissions shall be delivered to the court in banker boxes, accompanied by an agreed-upon exhibit list, no later than two weeks following the submission of the last brief. Such exhibit list shall be docketed by the parties.

VI. Electronic media. The parties are encouraged to file with the court an electronic version of their papers⁸ (on CD or DVD) with their courtesy paper copy (required per L.R. 5.3) – such electronic versions must be searchable.⁹ Electronic documents may contain hyperlinks to exhibits, legal authorities, briefs of record, or to other evidence of record where such materials are located on the same disc. All discs must be clearly labeled. Discs containing copies of materials filed under seal shall so indicate. The court will apply the same limits of availability to the public with respect to the digital version of sealed documents as applies to paper copies.

⁸ While bench trial exhibits shall not be filed as appendices to post-trial briefing, an electronic version of those exhibits cited in the post-trial briefing is helpful to the court.

⁹ The court appreciates that certain types of documents, for example, lab notebooks or handwritten notes, cannot be provided in searchable form. Such documents are exempt from this requirement.