

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

C.A. No. 19-859-RTH

**PLAINTIFFS' UNOPPOSED MOTION TO AMEND THE
SCHEDULING ORDER**

Plaintiffs e-Numerate Solutions, Inc., and e-Numerate, LLC (collectively “e-Numerate” or “Plaintiffs”) hereby moves this Court to amend the current Scheduling Order (D.I. 54) in this matter to provide Plaintiffs additional time to review and consider Defendant the United States of America’s (the “Government”) invalidity contentions in this matter. The parties met and conferred and the Government does not oppose this motion. In support thereof, Plaintiffs aver as follows.

WHEREAS this litigation involves eight United States Patents and multiple claims within each patent;

WHEREAS Plaintiffs served their preliminary infringement contentions in this matter on December 15, 2020, when this litigation involved seven patents;

WHEREAS Plaintiffs served supplemental preliminary infringement contentions on February 26, 2021;

WHEREAS Plaintiffs amended the Complaint on April 27, 2021, to assert United States Patent 10,423,708;

WHEREAS Plaintiffs served its Second Supplemental Preliminary Infringement Contentions on June 8, 2021 alleging infringement of over ninety (90) claims across eight patents;

WHEREAS the Government served its preliminary invalidity contentions (“invalidity contentions” on July 6, 2021;

WHEREAS the Government’s invalidity contentions set forth 62 separate invalidity contentions based on alleged prior art either alone or in combination;

WHEREAS the Government additionally advanced three invalidity contentions based on obviousness-type double patenting that also includes alleged prior art;

WHEREAS the Government also advanced multiple invalidity theories under 35 U.S.C. § 112;

WHEREAS the Government has agreed to supplement aspects of its invalidity contentions and to supplement its cover pleading to avoid motion practice;

WHEREAS Plaintiffs agree not to engage in motion practice regarding Defendant’s invalidity contentions including with respect to their adequacy or conformance with this Court’s rules (however, this agreement does not preclude Plaintiffs moving for summary judgment and/or *Daubert* and/or motions in *limine* regarding the substance of the contentions and does not signify agreement by Plaintiffs that the asserted claims are invalid); and

WHEREAS Plaintiffs require additional time to consider the multiplicity of invalidity theories advanced by the Government as well as the Government’s supplemental invalidity contentions before engaging in claim construction in this matter;

WHEREFORE, Plaintiffs respectfully move this Court to amend the Scheduling Order as follows, which the Government does not oppose:

EVENT	PRIOR DEADLINE	NEW DEADLINE
Defendant supplements its invalidity contentions	-	July 26, 2021
Parties exchange claim terms for construction	20 July 2021	3 September 2021
Parties exchange proposed claim construction	3 August 2021	17 September 2021
Parties disclose extrinsic evidence they may rely upon for claim construction	10 August 2021	24 September 2021
Deadline to meet and confer to narrow terms in dispute and exchange revised claim constructions	17 August 2021	1 October 2021
Plaintiffs file their opening claim construction brief	24 August 2021	8 October 2021
The Government files its responsive claim construction brief	14 September 2021	29 October 2021
Plaintiffs file their reply claim construction brief	28 September 2021	12 November 2021
The Government files its sur-reply claim construction brief	12 October 2021	3 December 2021
The parties submit the joint claim construction statement and propose dates for the Markman hearing in the first half of January	19 October 2021	10 December 2021
If desired, parties may submit joint technical tutorial to the Court	26 October 2021	17 December 2021
Markman Hearing	To be scheduled	To be scheduled
Deadline for the government to produce technical documents for additional agencies named in the second amended complaint.	30 November 2021	31 January 2022

Dated: July 19, 2021

Respectfully submitted,

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/s/ Sean T. O'Kelly

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