

“network”	a communications and data exchange system created by connecting two or more computers
“a set of”	two or more
“plurality”	two or more

(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 percipient and expert witnesses;

Plaintiff’s identification of proposed constructions and supporting intrinsic and extrinsic evidence is attached hereto as Exhibit A. As required by the Docket Control Order, Exhibit A reflects the parties’ efforts to narrow the number of disputed claim terms to ten. The following terms were agreed by the parties to be included in the ten most significant terms for construction: “application program,” “driver function(s),” “motion control operation,” and “primitive operation”/“non-primitive operation.” Following the agreement on those terms, the six remaining terms for construction were divided evenly between Plaintiff and Defendants. Plaintiff selected the following terms: “software driver(s)”/“driver(s),” “motion control,” and “workstation.” Defendants selected the following terms: “motion control component” / “motion component,” “control command generating module,” and “component code.” Plaintiff objects to Defendants’ selection of terms on the basis that Defendants’ characterization of each of those terms as a single term is incorrect. Instead, Defendants’ selected terms actually represent the disputed construction

under 35 U.S.C. § 112 ¶ 6 of eleven (11) separate claim terms—not three. *See* Exhibit A at n. 5-6. Plaintiff further objects to Defendants’ efforts to expand the number of claim terms construed beyond the eighteen (18) terms already identified in Exhibit A. Though Defendants claim the expansion to be from 10 terms to 17 terms, Plaintiff again disagrees with Defendants grouping of distinct claim terms into a “single” term for purposes of counting terms. In actuality, Defendants propose an expansion of the number of claim terms construed from 18 to 39. Plaintiff objects to Defendants’ refusal to comply with the narrowing of disputed claim terms directed by the Court and further objects to Defendants’ inclusion of those additional terms in this joint filing as a violation of the Court’s Docket Control Order.

Defendants’ identification of proposed constructions and supporting intrinsic and extrinsic evidence for the first 10 terms is attached hereto as Exhibit B-1. Defendants’ disclosure for the additional seven (7) terms it seeks to have construed is attached hereto as Exhibit B-2. Defendants note that due to the inability to reach agreement on a large number of terms, Defendants do not agree that limiting the list of terms to be construed to only 10 terms is appropriate, and submits that other key terms will be omitted if the parties are so limited. The case includes six separate defendants, each with numerous (sometimes dozens) of accused products, five asserted patents, and extremely lengthy claims and specifications. Accordingly, Defendants concurrently file herewith a motion to increase the number of claim terms to be construed from 10 to up to 17. Defendants provide their list of the seven additional terms proposed for construction in Exhibit B.

With respect to the counting issue raised above by Plaintiff, Defendants’ position is that a terms such as “component code” and the longer clauses that include “component code” are simply one term. The dispute for “component code” will be whether it should be construed as a means-plus-function term, and that dispute is the same for all clauses containing the term. The same is true for “motion control component,” “control command generating module,” and “driver code.”

Accordingly, each such term used in varying contexts should be counted as one term for purposes of tallying the total number of terms to be construed. Plaintiff's counting of terms leads to exaggerated numbers and should not be followed.

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

Plaintiff anticipates 4 hours as the total length of time necessary for the claim construction hearing, with 120 minutes allocated to each side.

Defendants state that the length of time necessary for the claim construction hearing depends on the ultimate number of terms heard for construction (which is the subject of Defendants' motion to construe more than ten terms), and whether live testimony will be necessary as explained below, and thereby propose 6 hours for the 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;

At this time, Plaintiff does not intend to call any witnesses at the claim construction hearing. Plaintiff reserves the right to call a rebuttal witness or expert if Defendants identify any such claim construction witnesses or experts. Defendants may raise objections and seek to strike and/or preclude reliance on such rebuttal witness or expert or any testimony he or she provides. Furthermore, any AMS expert declaration supporting arguments contained in its Opening Claim Construction Brief (other than those regarding alleged indefiniteness) shall be disclosed to Defendants no later than the filing of that brief.

Defendants may call an expert witness on the issue of indefiniteness at the claim construction hearing depending on the substance of Plaintiff's expert's declaration and Plaintiff's briefing on

terms that Defendants contend are indefinite. Defendants have summarized expected opinion testimony in Ex. B. Furthermore, Defendants' expert declaration, supporting arguments contained in Defendants Opening Claim Construction Brief, shall be disclosed to Defendants no later than the filing of that brief.

(E) A list of any other issues which 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.

Plaintiff's position: Subject to Plaintiff's objection to Defendants' improper grouping of claim terms resulting in the proposal of 18 claim terms instead of 10, Plaintiff is prepared to move forward on the disputed terms in Exhibit A and on that basis, does not anticipate the need for a prehearing conference.

Defendants' position: Defendants' concurrently filed motion to amend the Docket Control Order seeks to increase the number of claim terms to be construed by the Court from ten to up to seventeen terms for the reasons stated both above and in more detail in that Motion, and to increase the number of pages for briefing from 30 to 45 pages if the additional terms are allowed. Defendants are not aware of any other issues at this time.

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