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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRYAN C. McINTIRE, an individual,

NO. CIV. S-11-2495 LKK/CKD

Plaintiff,

v.

SUNRISE SPECIALTY COMPANY, a California corporation,

O R D E R

Defendant.

_____ /

Defendant has filed a motion requesting an early claim construction ("Markman")¹ hearing.² The motion will be granted.

Both sides appear to agree on the applicable law: "trial courts have a duty to conduct claim construction in design patent cases, as in utility patent cases." Egyptian Goddess, Inc. v. Swisa, Inc., 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc). The only serious issue plaintiff raises in opposition is his concern

¹ See Markman v. Westview Instruments, 517 U.S. 370 (1996).

² The parties' joint request to have this matter removed from the calendar and decided on the papers will be granted.

1 that a claim construction hearing will result in a detailed verbal
2 description of the claimed design.

3 However, the court is aware that "design patents are typically
4 claimed according to their drawings," and that "claim construction
5 must be adapted to a pictorial setting." Richardson v. Stanley
6 Works, Inc., 597 F.3d 1288, 1294 (Fed. Cir. 2010). The court is
7 also aware of the specific guidance in conducting claim
8 construction of design patents that was offered by the Federal
9 Circuit in Richardson.

10 Accordingly,

11 1. The April 23, 2012 hearing scheduled for this motion is
12 **VACATED**.

13 2. Defendant's motion for an early Markman hearing (Dkt. No.
14 20), is **GRANTED**. Defendant shall, no later than seven (7) days
15 from the date of this order, notice the Markman hearing for a
16 hearing date consistent with the following schedule.

17 a. The Parties shall confer and agree upon the claim or
18 claims to be construed in the patent no later than 90 days prior to
19 the hearing, at which point the Parties shall file with the Court
20 a notice of claims to be construed;

21 b. The Parties shall serve their opening briefs not
22 less than 60 days prior to the hearing;

23 c. The Parties shall serve their responsive briefs not
24 less than 30 days prior to the hearing; and

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d. The Parties shall serve their reply briefs not less than 14 days prior to the hearing.

IT IS SO ORDERED.

DATED: April 17, 2012.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT