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****E-filed 09/27/2010****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BALTHASER ONLINE, INC.

No. C 09-5422 RS

Plaintiff,

v.

**ORDER RE REQUEST FOR
ADMINISTRATIVE ORDER**

ART STAR DESIGN LLC, et al.,

Defendants.

In this patent infringement action, the parties have been engaged in preparations for a claims construction hearing, presently scheduled for December 1, 2010. On September 2, 2010, however, defendants moved for summary judgment, contending that the present record permits a determination that the asserted claims of the patent-in-suit are invalid as a matter of law on undisputed facts, without a full-fledged claims construction hearing and order. The hearing on that motion is scheduled for October 21, 2010.

On September 23, 2010, plaintiff filed an opposition to the summary judgment motion that argues both that the motion is premature, and that it should be denied on the merits. Invoking Civil Local Rule 7-11, plaintiff also filed a request that the summary judgment motion either be stricken without prejudice, or that the hearing thereon be deferred until claims construction and expert discovery has taken place.

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Plaintiff's request verges on seeking to resolve substantive questions beyond the scope of a Rule 7-11 motion, regarding the extent to which claim construction may be necessary to resolve the summary judgment motion. At heart, however, plaintiffs are raising questions of case management and scheduling that are appropriately addressed through a motion brought under Rule 7-11 and/or Rule 6-3.

That said, an evaluation of whether it might be appropriate to reach the merits of defendants' summary judgment motion prior to claim construction requires a closer examination of the merits of that motion than is practicable at this stage of the briefing. Because plaintiff has already prepared and filed substantive opposition to the summary judgment motion, it will not be prejudiced if that motion remains on calendar for now. Accordingly, defendants shall file their reply brief in support of the summary judgment as scheduled. The parties shall also proceed with preparations for claim construction on the assumption that even if a hearing on the summary judgment motion goes forward on October 21, 2010, the Court may elect not to decide the motion until after the claim construction hearing. A further order or Clerk's notice will issue if the hearing on the summary judgment motion is to be continued or if the matter is taken under submission without oral argument, pursuant to Civil Local Rule 7-1(b).

IT IS SO ORDERED.

Dated: 09/27/10



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE