

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH C. BROOKS,
Plaintiff,

No. C 10-04341 CRB

**ORDER REQUIRING
SUPPLEMENTAL BRIEFING**

v.

DUNLOP MANUFACTURING INC.,
Defendant.

Plaintiff Kenneth C. Brooks filed this false patent marking action against Defendant Dunlop Manufacturing, Inc. in October 2010 as a *qui tam* relator. The action was stayed in June 2011; Defendant filed a Motion to Lift Stay and Dismiss (dkt. 45), and the Court held a motion hearing on Friday, November 18, 2011. At the motion hearing, Plaintiff argued for the first time that the retroactive amendments to the false marking statute in the America Invents Act repudiate a contractual obligation that the government owed to him in violation of the Constitution, per Cherokee Nation of Ok. v. Leavitt, 543 U.S. 631, 646 (2005). The government responded briefly that it had no contract with Plaintiff, and that, even if there was such a contract, Plaintiff's claim for breach would have to be brought in the Court of Federal Claims.

In order to allow all parties to properly address Plaintiff's new argument, the Court requires supplemental briefing. Specifically, all parties are directed to file briefs of no more

1 than twelve pages by 5:00 p.m. on Wednesday, November 30, 2011, and are specifically to address
2 United States ex. rel. Kelly v. Boeing Co., 9 F.3d 743, 748 (9th Cir. 1993), which held in the context
3 of standing that the *qui tam* provisions of the False Claims Act “operate as an enforceable, unilateral
4 contract,” whereby “[t]he terms and conditions of the contract are accepted by the relator upon filing
5 suit.”

6 **IT IS SO ORDERED.**

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9 Dated: November 21, 2011

CHARLES R. BREYER

UNITED STATES DISTRICT JUDGE

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