

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARNES & NOBLE, INC., *et al.*,

No. C-11-2709 EMC

Plaintiffs,

ORDER RE CASE SCHEDULING

v.

LSI CORPORATION, *et al.*,

Defendants.

On April 22, 2014, the Court held a case management conference in this action in which the Court ordered the parties to meet and confer regarding narrowing the claims and prior art references that will be subject to initial adjudication. The Court directed the parties to the Federal Circuit's model order on this topic and ordered:

By 4/29/14, after meeting and conferring, Defendant shall e-file a letter brief identifying essential terms (not to exceed 7) that absolutely require construction in order to select the limited number of claims to be adjudicated under the Federal Circuit model order framework. LSI shall explain why these terms are important. LSI shall also . . . propose and explain the number of claims to be adjudicated. Plaintiff's response thereto shall be filed by 5/2/14.

Dkt. No. 308, at 1. The parties have filed the requested brief. LSI asserts that construction of one additional term in the '958 patent ("suitable for multipath environments") will allow it to determine whether to include the '958 patent in the "Phase 1" Patents. Dkt. No. 310, at 1.

The Court has carefully considered the parties' respective positions and rules as follows. The Court will construe "suitable for multipath environments" in the '958 patent prior to requiring to identify the claims to be adjudicated in the initial phase of this case. No later than **Friday, June 13, 2014**, LSI shall file its opening claim construction brief as to this term. This brief shall not exceed 5

1 pages in length. No later than **Friday, June 27, 2014**, Barnes & Noble shall file its responsive
2 briefs that shall not exceed 3 pages in length. LSI may file any reply brief, not to exceed 3 pages, no
3 later than **Thursday, July 3, 2014** at 5:00pm. The claim construction hearing on this term will
4 occur on **July 21, 2014** at 3:00pm.

5 Consistent with the Federal Circuit's (and Eastern District of Texas') model order, LSI shall,
6 within two weeks of the issuance of this Court's order construing the term "suitable for multipath
7 environments," file an "Election of Asserted Claims" with the Court in which it identifies: (1) the
8 five patents on which it will proceed in this initial phase of the case; and (2) no more than **20 claims**
9 on which it will seek adjudication (with no more than 5 claims per patent). Within two weeks of the
10 filing of LSI's election, Barnes & Noble shall file an "Election of Asserted Prior Art" in which it
11 identifies no more than **25 prior art references** (and no more than 6 references per patent).

12 The Court declines, at this time, to impose limits on the affirmative defenses Barnes & Noble
13 may assert as to LSI's elected patents.

14 To the extent either party believes that further discovery must be completed before they can
15 comply with this order, they shall meet and confer and strive to reach an accommodation on the
16 issue. To extent this is not possible,¹ the parties shall promptly bring any dispute to the attention of
17 Judge Beeler for resolution.

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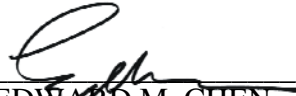
19 IT IS SO ORDERED.

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21 Dated: May 16, 2014

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EDWARD M. CHEN
United States District Judge

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27 ¹ The Court admonishes both parties that it expects a far greater degree of cooperation by the
28 parties than the numerous discovery disputes littering this Court's docket suggest has occurred to
date. The parties *should* have a joint interest in ensuring the quick and efficient resolution of this
case and *will* work together on discovery matters.