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

Innovus Prime, LLC,

NO. C 11-04223 JW

Plaintiff,

**PATENT SCHEDULING ORDER;
ORDER GRANTING PLAINTIFF LEAVE
TO AMEND; DENYING MOTION TO
DISMISS AS MOOT**

v.

LG Electronics, Inc., et al.,

Defendants.

This case is scheduled for a Case Management Conference on February 13, 2012. Pursuant to the Federal Rules of Civil Procedure and Local Rules of this Court, the parties conferred and duly submitted a Joint Case Management Statement. (See Docket Item No. 143.)

In their Joint Statement, Plaintiff contends that it will move to amend its Second Amended Complaint “to remove any indirect infringement claims” against Defendants, while Defendants contend that they “are not opposed” to Plaintiff’s proposed amendments, and that they “agree[] to withdraw” their pending Motion to Dismiss¹ “at the same time [Plaintiff] files its [Third Amended Complaint].” (Docket Item No. 143 at 4-5.) In light of the parties’ contentions, the Court finds good cause to grant Plaintiff leave to amend its Complaint. Accordingly, Defendants’ Motion to Dismiss is DENIED as moot. On or before **February 13, 2012**, Plaintiff shall file its Third Amended Complaint.

¹ (Notice of Motion and Motion to Dismiss by Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc., hereafter, “Motion to Dismiss,” Docket Item No. 137.)

1 Further, based on their joint submission, it appears that a schedule for the case can be set
2 without the necessity of an appearance at this time. Accordingly, the Case Management Conference
3 is VACATED and the parties are ordered to comply with the following schedule:

4 **CASE SCHEDULE**

5 Infringement Contentions (¶ 1) <i>(≈10 days after the Initial Case Management Conference)</i>	February 24, 2012
6 Invalidity Contentions (¶ 2) <i>(≈45 days after the Initial Case Management Conference)</i>	March 30, 2012
7 Joint Claim Construction and Prehearing Statement (¶ 6) <i>(≈105 days after the Initial Case Management Conference)</i>	June 1, 2012
8 Close of Claim Construction Discovery (¶ 7) <i>(≈30 days after the Joint Claim Construction and Prehearing Statement)</i>	August 27, 2012
9 Interim Case Management Conference	October 1, 2012 at 9 a.m.
10 Joint Case Management Statement for Interim Conference <i>(The Statement shall, among other things, update the Court on the parties' readiness for the <u>Markman</u> hearing.)</i>	September 21, 2012
11 Case Tutorial (¶ 8)	November 8, 2012
12 Claim Construction Hearing (¶ 9)	November 9, 2012

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16 None of the dates set in this Order may be changed without an order of the Court made after
17 a motion is filed pursuant to the Civil Local Rules of Court.

18 **A. Initial Disclosures**

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20 1. No later than 10 days after the Initial Case Management Conference, the party asserting
21 infringement must serve on all parties a Disclosure of Asserted Claims and Infringement
22 Contentions and make available for inspection and copying the documents described in Patent L.R.
23 3-1.

24 2. No later than 45 days after the Initial Case Management Conference, each opposing party
25 shall serve on all parties Invalidity Contentions and produce and make available for inspection and
26 copying the documents described in Patent L.R. 3-3.

1 8. On the date set in the Case Schedule, the parties shall appear before the Court to present a
2 tutorial. The purpose of the tutorial is to allow each party to inform the Court about the background
3 of the technical information which is involved in the case and the nature of the dispute.
4 Presentations may include demonstrations, expert testimony, or audio visual materials. No cross-
5 examination will be permitted. However, the Court may pose questions to parties or witnesses. No
6 record will be made of the proceedings. Statements made during the tutorial may not be cited as
7 judicial admissions against a party. **Each party shall have 45 minutes for their presentation.**
8 Any party wishing for additional time shall make the appropriate administrative motion in
9 accordance with the Civil Local Rules of Court. See Civ. L.R. 7-11.

10 9. On the date set in the Case Schedule, the Court will hold a Claim Construction Hearing.
11 At the hearing the Court will consider only intrinsic evidence to interpret the disputed claims, i.e.,
12 the claims themselves, the written description portion of the specification and the prosecution
13 history. Pertinent portions of the intrinsic evidence should be highlighted and indexed to the
14 disputed claim language. No testimony will be allowed, unless the Court orders otherwise, based
15 upon a timely motion noticed for hearing at least 10 days prior to the Claim Hearing by any party
16 wishing to present testimony. **Each party shall have one hour for their presentation.** Any party
17 wishing for additional time shall make the appropriate administrative motion in accordance with the
18 Civil Local Rules of Court. See Civ. L.R. 7-11.

19 10. Notwithstanding Patent L.R. 4-5, the parties shall comply with the following briefing
20 schedule:

21 a. Opening Brief: The party claiming patent infringement must serve and file its
22 opening brief and supporting evidence on or before the date 35 days prior to the Claim
23 Construction Hearing. Accompanying the brief must be a proposed jury instruction which
24 incorporates the language which the party contends should be adopted in construing the
25 claims.

26 b. Responsive Brief: Each opposing party must serve and file its responsive brief
27 and supporting evidence on or before the date 21 days prior to the Claim Construction
28

1 Hearing. Accompanying the brief must be a proposed jury instruction which incorporates the
2 language which the party contends should be adopted in construing the claims.

3 c. Reply Brief: The party claiming patent infringement must serve and file any
4 reply brief and supporting evidence on or before the date 14 days prior to the Claim
5 Construction Hearing.

6 **C. Further Case Management Order**

7 11. At the conclusion of the Claim Construction Hearing, the Court will set a date and time
8 for a further Case Management Conference to schedule subsequent events in the case.

9 **D. Procedure Regarding Dispositive Motions in Patent Cases**

10 12. Prior to filing any dispositive motion, the moving party must first advise the Court and
11 opposing counsel of its intention to do so by filing and serving a request for a case management
12 conference regarding dispositive motion(s). The request must outline the undisputed factual basis
13 and legal basis of the proposed motion(s) and a proposed briefing and hearing schedule. The Court
14 may schedule a case management conference to establish the schedule for briefing and hearing the
15 motion(s) in an orderly and efficient manner or may issue an order adopting the schedule proposed
16 by the parties.

17 Once a hearing date for the motion has been set and the briefing is closed, the moving party
18 shall compile a three ring binder (to be lodged with the Court) containing (1) the motion and any
19 supporting memorandum of law; (2) the opposition memorandum; (3) any reply memorandum; and
20 (4) any exhibits in support or opposition to the motion, which shall be clearly labeled. At the
21 beginning of each binder the moving party shall include, as appropriate, a Chart A or B, in the
22 format described below; each statement shall be supported by appropriate citations to the motion
23 papers and or exhibits.

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Chart A - Summary of Infringement Issues

Patent Claim/Elements	Stipulated Construction/Court Construction	Accused Product	Defense Asserted
'000 Patent, Claim 1			
an apparatus comprising	apparatus means: "a device which. . ."	Riverside Model 2	
1. a handle	"handle" means a part held by the human hand	Riverside Model 2	the product lacks a handle

Chart B - Summary of Invalidity Issues

Title of Motion	Patent	Claim No.	Basis of challenge	Summary of argument in support of motion	Summary of argument in opposition to motion	Comments
Partial Motion for Summary Judgment of Invalidity	'000	Claim 3	Lack of Disclosure of Best Mode	The specification states that the inventor was aware [See '000 Patent, Col 3:5-10]	The reference is to a different invention.	This matter is controlled by the Court's claim construction of the following terms:

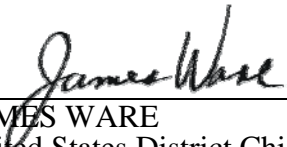
E. Electronic Storage of Exhibits

13. The Court has available a digital and video electronic evidence presentation system. The parties are ordered to familiarize themselves with the system, and to meet and confer about whether the case will involve voluminous documentation. If so, as the parties identify documentary material which is likely to be used as trial exhibits, the parties are ordered to electronically store these materials in a fashion which will facilitate displaying them electronically during the trial. The parties are reminded that Civil L.R. 30-2(b) requires sequential numbering of exhibits during depositions and that numbering must be maintained for those exhibits throughout the litigation. Each proposed exhibit shall be pre-marked for identification. All exhibits shall be marked with

1 numerals. The parties shall meet and confer on a division which will avoid duplication (e.g.,
2 Plaintiff: 1-99,000; Defendant #1: 100,000-299,999; Defendant #2: 300,000-500,000).

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Dated: February 7, 2012



JAMES WARE
United States District Chief Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: February 7, 2012

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Susan Imbriani
Courtroom Deputy