

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. BOX 193939
SAN FRANCISCO, CALIFORNIA 94119-3939

MEMORANDUM

TO: Parties in Cross-Appeals

FROM: Clerk's Office of the U.S. Court of Appeals
for the Ninth Circuit

SUBJECT: Briefing Schedules in Cross-Appeals

This memorandum will serve as a Ninth Circuit interpretation and clarification of the cross-appeals briefing schedule referenced in the Federal Rules of Appellate Procedure (FRAP). Regarding the filing of briefs, the parties in cross-appeals should generally refer to FRAP and Circuit Rules 28 and 32.

In cross-appeals in this court each of the two adversary positions is allowed to file two briefs. Unless the parties stipulate otherwise, the party filing the first appeal should file the first brief as cross-appellant/appellee. This brief is due by court order approximately 40 days from the filing of the Certificate of Record in the U.S. Court of Appeals. The party filing the subsequent or second appeal (appellee/cross-appellant in these cases) shall have 30 days to file a brief which shall contain the issues and argument in the cross-appeal as well as answering the opening brief of the party who first appealed (cross-appellant/appellee). The third brief should be filed by the party who first appealed (cross-appellant/appellee) within 30 days from the filing of brief number two by the appellee/cross-appellant. This third brief is filed as a reply brief in the principal appeal and as an answering brief in the cross-appeal. The fourth brief is filed by the appellee/cross-appellant only as a reply brief in the cross-appeal. It is optional and should be filed within 14 days of the filing of the combined brief of cross-appellant/appellee.

If the parties agree, a written stipulation may be filed in this court which exchanges the role of the adversary parties in filing the foregoing briefs.

The following chart is offered as a synopsis of the briefing schedule.

A formal motion is required in order to request an enlargement of time in order to file any brief in the cross-appeals briefing schedule, except a party may receive a single oral extension of no more than 14 days within which to file a brief. Likewise a formal motion is required in order to file an "oversized" brief and any such motions must be in conformance with FRAP and Circuit Rule 32.

CHART OF BRIEFING SCHEDULE FOR CROSS-APPEALS

BRIEF No.	BY	RELATIONSHIP OF BRIEF TO APPEAL #1	RELATIONSHIP OF BRIEF TO APPEAL #2	COLOR OF COVER	TIME LIMIT*	PAGE LIMIT*
1	cross-appellant/appellee (first appealing party) Excerpts required	opening		blue	40 days from the filing of the Certificate of Record by the Clerk of the U.S. Court of Appeals or by Time Schedule Order	14,000 words or 30 pgs.
2	appellee/cross-appellant (second appealing party) Excerpts required	appellee's (answering) brief [combined]	opening briefs]	red	30 days from the service of brief #1 or by Time Schedule Order	16,500 words or 35 pgs.
3	cross-appellant/appellee (first appealing party)	reply [combined]	appellee's (answering) brief briefs]	Yellow	30 days from the service of brief #2 or by Time Schedule Order	14,000 words or 30 pgs.
4	appellee/cross-appellant (second appealing party)		reply	gray	14 days from the service of brief #3	7,000 words or 15 pgs.

* See FRAP and Circuit Rule 32.

UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

Office of the Clerk

After Opening a Case – Counseled Cases
(December 2009)

Court Address – San Francisco Headquarters

<i>Mailing Address for U.S. Postal Service</i>	<i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>	<i>Street Address</i>
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

Court Addresses – Divisional Courthouses

<i>Pasadena</i>	<i>Portland</i>	<i>Seattle</i>
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

Court Website – www.ca9.uscourts.gov

The Court’s website contains the Court’s Rules and General Orders, information about electronic filing of documents, answers to frequently asked questions, directions to the courthouses, forms necessary to gain admission to the bar of the Court, opinions and memoranda, recordings of oral arguments, links to practice manuals, and an invitation to join our Pro Bono Program.

Electronic Case Filing

The Ninth Circuit's Appellate ECF (Electronic Case Files) system is mandatory for all attorneys filing in the Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use the Appellate ECF system. [Registration](#) and information about ECF is available on the Court's website at www.ca9.uscourts.gov under *Electronic Filing–ECF*. Read the [Circuit Rules](#), especially Ninth Circuit Rule 25-5, for guidance on Appellate ECF, including which documents can and cannot be filed electronically.

Rules of Practice

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at www.ca9.uscourts.gov under *Rules*.

Practice Resources

The Court has prepared a practice guide video entitled *Perfecting Your Appeal*. The video may be viewed for free on the Court's website at www.ca9.uscourts.gov under *FAQs, Forms and Instructions -> Guides and Legal Outlines*, and may be purchased through the Clerk's office in San Francisco for \$15.00. Continuing legal education credit for viewing this videotape is available in most jurisdictions.

Admission to the Bar of the Ninth Circuit

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

To apply for admission, obtain an application (on the Court's website at www.ca9.uscourts.gov under *Forms* or by calling (415) 355-7800) and submit it to the Clerk's Office in San Francisco with the admission fee of \$190.00. Make checks payable to Clerk, U.S. Court of Appeals. It takes 4 to 6 weeks to receive a certificate of admission.

Notice of Change of Address

Counsel who are registered for Appellate ECF must update their personal information, including street addresses and/or email addresses, online at: <https://pacer.psc.uscourts.gov/psco/cgi-bin/cmecf/ea-login.pl> 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using Appellate ECF must file a written change of address with the Court. 9th Cir. R. 46-3.

Motions Practice

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-13.

- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.
- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief and/or relief by a date certain must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel. 9th Cir. R. 25-4.

Emergency or Urgent Motions

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

Briefing Schedule

The Court issues the briefing schedule at the time the appeal is docketed.

Certain motions (e.g., a motion for dismissal) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The opening and answering brief due dates (and any other deadline set for a date certain by the Court) are not subject to the additional time described in Fed. R. App. P. 26(c). The early filing of appellant's opening brief does not advance the due date for appellee's answering brief. 9th Cir. R. 31-2.1.

Extensions of Time to file a Brief

A party may seek *either* an oral or written extension of time.

Oral Extension

If good cause is shown, the clerk may grant a single extension of no more than 14 days to file an opening, answering or reply brief. 9th Cir. R. 31-2.2(a). You must inform opposing counsel of your plan to request an extension of time before contacting the clerk. If an oral extension is granted, the moving party will not receive any further extensions of time unless the moving party can demonstrate extraordinary circumstances. You may apply for an oral extension by calling:

- Northern & Eastern California, Hawaii, Guam, Arizona, Northern Mariana Islands, Nevada: (415) 355-7853
- Central & Southern California: (626) 229-7261
- Eastern & Western Washington, Idaho, Montana, Oregon, Alaska: (206) 224-2210

Written Extension

Requests for extensions of more than 14 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion

shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

Contents of Briefs

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2.

Excerpts of Record

The Court requires excerpts of record rather than an appendix. 9th Cir. R. 30-1.1(a). Appellant shall file 4 separately-bound excerpts of record with white covers at the time the Opening Brief is filed, and shall serve one copy on each party. 9th Cir. R. 30-1.3. Please review 9th Cir. R. 30-1.3 through 30-1.6 to see a list of the specific contents and format.

For excerpts that exceed 75 pages, the first volume must comply with 9th Cir. R. 30-1.6(a). Excerpts exceeding 300 pages must be filed in multiple volumes. 9th Cir. R. 30-1.6(b).

Appellee may file supplemental excerpts and appellant may file further excerpts. 9th Cir. R. 30-1.7 and 30-1.8. If you are an appellee responding to a pro se brief that did not come with excerpts, then your excerpts need only include the contents set out at 9th Cir. R. 30-1.7.

Mediation Program

Mediation Questionnaires are required in all civil cases except cases in which the appellant is proceeding pro se, habeas cases (28 U.S.C. §§ 2241, 2254 and 2255) and petitions for writs (28 U.S.C. § 1651). 9th Cir. R. 3-4. They are not required in criminal cases.

The Mediation Questionnaire is available on the Court's website at

www.ca9.uscourts.gov under *Forms*. The Mediation Questionnaire should be filed within 7 days of the docketing of a civil appeal. The Mediation Questionnaire is used only to assess settlement potential.

If you are interested in requesting a conference with a mediator, you may call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. More information about the Court's mediation program is available at <http://www.ca9.uscourts.gov/mediation>.

Oral Hearings

Notices of the oral hearing calendars are distributed approximately 4 to 5 weeks before the hearing date. The Court sits monthly in San Francisco, Pasadena and Seattle. The Court sits in Portland every other month, depending on caseload. The Court also hears cases 3 times a year in Honolulu and once a year in Anchorage.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34.



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

May 04, 2010

No.: 10-16015
D.C. No.: 5:07-cv-03952-JW
Short Title: Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.,
et al

Dear Appellants/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

The due dates for filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist to help you monitor the progress of your case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 04 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff - Appellee,

v.

AKANOC SOLUTIONS, INC.;
MANAGED SOLUTIONS GROUP,
INC.; STEVEN CHEN,

Defendants - Appellants.

No. 10-15909

D.C. No. 5:07-cv-03952-JW

U.S. District Court for Northern
California, San Jose

TIME SCHEDULE ORDER

LOUIS VUITTON MALLETIER, S.A.,

Plaintiff - Appellant,

v.

AKANOC SOLUTIONS, INC.;
MANAGED SOLUTIONS GROUP,
INC.; STEVEN CHEN,

Defendants - Appellees.

No. 10-16015

D.C. No. 5:07-cv-03952-JW

U.S. District Court for Northern
California, San Jose

This order vacates all brief due dates set by previously issued time schedule orders. The parties shall meet the following cross appeal time schedule.

Wed., July 28, 2010 The party(s) who filed the first appeal shall file and serve the first brief on cross-appeal pursuant to FRAP 32 and 9th Cir. R. 32-1.

Fri., August 27, 2010 The party(s) who filed the second appeal shall file and serve the second brief on cross-appeal pursuant to FRAP 32 and 9th Cir. R. 32-1.

Mon., September 27, 2010 The third brief on cross-appeal shall be filed and served pursuant to FRAP 32 and 9th Cir. R. 32-1.

The optional cross appeal reply brief shall be filed and served within fourteen days of service of the third brief on cross appeal, pursuant to FRAP 32 and 9th Cir. R. 32-1.

Failure of the appellants to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Gerald Rosen
Deputy Clerk