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

Avocet Sports Technology, Inc., et al.,

No. C-08-04264 JW

Plaintiff,

**PATENT SCHEDULING ORDER**

v.

Amer Sports Corp., et al.,

Defendants.

Upon filing, this case was scheduled for a case management conference on January 26, 2009. 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 and Proposed Order. (See Docket Item No. 29.) Based on their joint submission, it appears that a schedule for the case can be set without the necessity of an appearance at this time. Accordingly, the case management conference is VACATED and the parties are ordered to comply with the following schedule:

**CASE SCHEDULE**

<b>Infringement Contentions (¶ 1)</b> <i>(≈10 days after the Initial Case Management Conference)</i>	<b>February 5, 2009</b>
<b>Invalidity Contentions (¶ 2)</b> <i>(≈45 days after the Initial Case Management Conference)</i>	<b>March 23, 2009</b>
<b>Joint Claim Construction and Prehearing Statement (¶ 6)</b> <i>(≈105 days after the Initial Case Management Conference)</i>	<b>June 22, 2009</b>

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<b>Close of Claim Construction Discovery (¶ 7)</b> <i>( ≈30 days after the Joint Claim Construction and Prehearing Statement )</i>	<b>July 22, 2009</b>
<b>Interim Case Management Conference</b>	<b>August 31, 2009 at 10 a.m.</b>
<b>Joint Case Management Statement for Interim Conference</b> <i>(The Statement shall, among other things, update the Court on the parties' readiness for the <u>Markman</u> hearing.)</i>	<b>August 21, 2009</b>
<b>Case Tutorial (¶ 8)</b>	<b>September 18, 2009 at 9 a.m.</b>
<b>Claim Construction Hearing (¶ 9)</b>	<b>September 25, 2009 at 9 a.m.</b>

With the exception of the dates set forth above, the Court adopts all other dates Stipulated by the parties in their Joint Case Management Statement. None of the dates set in this Order may be changed without an order of the Court made after a motion is filed pursuant to the Civil Local Rules of Court.

**A. Initial Disclosures**

1. No later than 10 days after the Initial Case Management Conference, the party asserting infringement must serve on all parties a Disclosure of Asserted Claims and Infringement Contentions and make available for inspection and copying the documents described in Patent L.R. 3-1.
2. No later than 45 days after the Initial Case Management Conference, each opposing party shall serve on all parties Invalidity Contentions and produce and make available for inspection and copying the documents described in Patent L.R. 3-3.
3. Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Motions to amend shall be filed pursuant to the Civil Local Rules of Court and noticed for a hearing before the assigned Magistrate Judge.

**B. Claim Construction Proceedings**

4. No later than 10 days after filing Invalidity Contentions, all parties must serve on all other parties Proposed Terms and Claim Elements for Construction pursuant to Patent L.R. 4-1. The

1 parties shall thereafter meet and confer for the purposes of limiting the terms in dispute by  
2 narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim  
3 Construction and Prehearing Statement. The parties shall also jointly identify the 10 terms likely to  
4 be most significant to resolving the parties' dispute, including those terms for which construction  
5 may be case or claim dispositive.

6 5. No later than 20 days after exchanging Proposed Terms and Claim Elements for  
7 Construction, all parties must serve on all other parties Preliminary Claim Constructions and  
8 Extrinsic Evidence pursuant to Patent L.R. 4-2.

9 6. No later than 30 days after exchanging Preliminary Claim Constructions, the parties must  
10 file a Joint Claim Construction Statement and Prehearing Statement pursuant to Patent L.R. 4-3.

11 The statement shall be presented in the following chart format:

12

Disputed Term	Plaintiff's Proposed Construction	Defendant's Proposed Construction
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14 The parties shall express their proposed construction in a manner suitable for incorporation into a  
15 jury instruction. The parties shall identify the terms whose construction will be most significant to  
16 the resolution of the case. However, the total terms identified by all parties as most significant  
17 cannot exceed 10.

18 7. Pursuant to Patent L.R. 4-4, all discovery, including depositions of expert witnesses,  
19 relating to claim construction must be completed within 30 days of filing the Joint Claim  
20 Construction Statement and Prehearing Statement.

21 8. On the date set in the Case Schedule, the parties shall appear before the Court to present a  
22 tutorial. The purpose of the tutorial is to allow each party to inform the Court about the background  
23 of the technical information which is involved in the case and the nature of the dispute.  
24 Presentations may include demonstrations, expert testimony, or audio visual materials. No cross-  
25 examination will be permitted. However, the Court may pose questions to parties or witnesses. No  
26 record will be made of the proceedings. Statements made during the tutorial may not be cited as  
27 judicial admissions against a party.





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

Dated: January 22, 2009

  
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 JAMES WARE  
 United States District Judge

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

2 Bradley T. Fox [brad@foxgroupllc.com](mailto:brad@foxgroupllc.com)  
3 David Jeanchung Tsai [djtsai@townsend.com](mailto:djtsai@townsend.com)  
4 Frear Stephen Schmid [frearschmid@aol.com](mailto:frearschmid@aol.com)  
5 Robert Allan McFarlane [ram@townsend.com](mailto:ram@townsend.com)

6 **Dated: January 22, 2009**

**Richard W. Wieking, Clerk**

7 **By: /s/ JW Chambers**  
8 **Elizabeth Garcia**  
9 **Courtroom Deputy**

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