

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:11-cv-00301-DME-CBS

ALCOHOL MONITORING SYSTEMS, INC.,

Plaintiff and Counterclaim Defendant,
vs.

BI INCORPORATED, a Colorado Corporation,

Defendant and Counterclaim Plaintiff.

ORDER

THIS MATTER is before the Court on BI's May 21, 2012, Unopposed Motion for Leave to File a Supplemental *Markman* Brief (Doc. 104) and AMS's May 17, 2012, Supplement/Amendment to its Motion for Summary Judgment of Non-Infringement Regarding the '884 Patent (Doc. 101). The Court has reviewed those filings and rules on them as discussed below. The Court further seeks to clarify two other matters identified below.

1. Regarding BI's unopposed motion for leave to file a supplemental *Markman* brief – The Court GRANTS the motion to file supplemental briefs but ORDERS that AMS submit its response to BI's brief (which BI submitted on May 21) no later than 12:00 pm on Tuesday, May 29, 2012, as opposed to the Wednesday, May 30, 2012, date proposed in the motion.

2. Regarding AMS's supplement to its motion for summary judgment regarding the '884 patent – The Court accepts AMS's supplemental brief and will consider it in the Court's consideration of AMS's motion for summary judgment. The Court DENIES AMS's request for a separate hearing, prior to the scheduled *Markman* hearing, regarding summary judgment exclusively. However, the Court ORDERS the parties to be prepared orally to argue the issue of summary judgment at the scheduled *Markman* hearing. If BI wishes to file a response brief to AMS's supplemental brief, the Court ORDERS that it do so by noon on Tuesday, May 29, 2012.
3. The Court observes that the *Markman* hearing is scheduled for Thursday, June 7, 2012, with possible carryover into Friday, June 8. (*See* Doc. 97.) The unopposed motion for leave to file supplemental *Markman* briefs incorrectly identifies the hearing as scheduled for June 6-7.
4. The Court wishes to confirm the parties' representation, made at the December 14, 2012, status conference before this Court, that the '919 patent in this case will not require construction and consideration at the *Markman* hearing. (*See* Doc. 83 at 14-15.) At that status conference, the parties agreed that the construction of the '919 in another case before Judge Brimmer of this district would apply in this case as well. The Court ORDERS the parties to confirm no later than noon on Tuesday, May 29, 2012, their respective positions on whether the Court will need to consider the '919 at the *Markman* hearing. If the '919 patent will require consideration, the parties are ordered to state whether they will rest on prior briefs

that have been filed in Judge Brimmer's case. In that case, those briefs shall be submitted to this Court within 48 hours of the issuance of this order.

DATED this 22nd day of May, 2012.

BY THE COURT:

s/ David M. Ebel

U.S. Circuit Court Judge
District of Colorado