

## Judge Albright's Latest Changes to His Order Governing Procedures

NOVEMBER 1, 2020

Judge Albright announced his latest changes to his Order Governing Procedures (OGP), which are now published on the Western District of Texas website [here](#).

Here are the highlights:

- **Rule 16 Case Management Conference (CMC):** The Court is only holding these conferences telephonically. The topics for discussion at the conference are now limited to “any pre-*Markman* issues raised in the parties’ joint Case Readiness Status Report.” As we have seen in practice, if the parties do not have any open issues, Judge Albright will cancel the CMC, assign it an effective date, provide a *Markman* hearing date, and set an estimated trial date. Here is the substance of a recent sample email from the Court::

*“Because the parties indicated in their Case Readiness Status Report that they do not have any pre-Markman issues, the Court will not hold a CMC in this case.*

*Please file a joint proposed scheduling order using the following dates:*

1. CMC: Deemed to have occurred on **[DATE]**
2. *Markman*: **[approximately 5 months from effective CMC date]** (half-day)
3. Estimated trial date: **[approximately 1 year from Markman date]**

*To the extent that the parties would like to move the trial date (to an earlier or later date), please feel free to raise that at the Markman hearing.”*

- **Venue and Jurisdictional Discovery:** The Court set the following default discovery limits: (a) five interrogatories per party; (b) five requests for production per party; and (c) a four-hour deposition time limit for a 30(b)(6) witness per party. If a party submits multiple declarations (for or against the motion), the Court will allow additional discovery, e.g., two more interrogatories, two more requests for production, and two more hours of deposition.
- **Markman procedures:**

- If the Court grants leave for more terms than the presumed limit, the Court may split the hearing into multiple hearings (no longer just two hearings).
- The Court reduced the presumed number of claim terms it would construe.
- **Limits for Number of Claim Terms to be Construed**

1-2 PATENTS	3-5 PATENTS	MORE THAN 5 PATENTS
From 10 to 8 terms	From 12 to 10 terms	From 15 to 12 terms

- The Court eliminated simultaneous briefing and added a 15-page sur-reply for the defendant. The briefing schedule is:
  - Plaintiff’s Opening Brief – 14 weeks after CMC
  - Defendant’s Responsive Brief – 17 weeks after CMC
  - Plaintiff’s Reply – 19 weeks after CMC
  - Defendant’s Sur-Reply – 21 weeks after CMC
  - Joint Claim Construction Statement – three business days after Sur-Reply
- The Court’s default order for terms presented in the brief is based on (a) the patent number (lowest to highest); (b) the claim number (lowest to highest); and (c) the order of appearance within the lowest number patent and claim. The OGP provides an example order of terms.
- The Court also now allows “any party” to use “a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.”

2 Min Read

## Author

[Danielle Williams](#)

## Related Locations

- Charlotte
- Chicago
- Dallas
- Houston
- Los Angeles
- Silicon Valley

## Related Topics

- Markman/Claim Construction
- Discovery

## Related Capabilities

- Intellectual Property
- Patent Litigation

## Related Regions

- North America

## Related Professionals

---



Danielle Williams

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*