

Judge Albright's Latest Changes to His Order Governing Procedures

MARCH 23, 2022

Judge Albright issued multiple standing orders on March 7, 2022, changing various procedural requirements for litigating patent cases in his court.

Here are the highlights:

- **NOTICES OF READINESS.** In all cases, parties must jointly file a Case Readiness Status Report (“CRSR”) in the format [found here in Exhibit A](#). They must do so (a) within seven days after the defendant (or at least one defendant among a group of related defendants sued together) has responded to the initial pleadings in cases where there are no CRSR Related Cases or (b) when there are CRSR Related Cases, within seven days after the last defendant (or last defendant group when at least one defendant among the group has responded) among the CRSR Related Cases has responded to the initial pleadings. The CRSR must be filed in each case and identify all other CRSR Related Cases. Cases shall be considered CRSR Related Cases when they meet both of these criteria: (1) the cases are filed within thirty days after the first case is filed, and (2) the cases share at least one common asserted patent. If the parties have any pre-*Markman* issues needing resolution, the parties must email the court a joint submission of the parties’ positions after filing the CRSR. The Case Management Conference (“CMC”) shall be deemed to occur fourteen days after the filing date of the CRSR. If the CRSRs in CRSR Related Cases are not all submitted on the same date, the CMC shall be deemed to occur fourteen days after the last CRSR in those CRSR Related Cases is filed. The court intends to coordinate the CRSR Related Cases on the same schedule with a single *Markman* hearing, so the parties should plan accordingly. In all cases, the *Markman* hearing shall be initially scheduled for twenty-three weeks after the CMC and should be included in the parties’ proposed scheduling order in accordance with the court’s order governing procedures.
- **DOCUMENTS UNDER SEAL AND REDACTED PUBLIC VERSIONS.** Filing parties must file a publicly available, redacted version of any motion or pleading filed under seal within seven (7) days. The parties need not file redacted versions of exhibits to such documents. Exhibits that are nonconfidential in their entirety should not be filed under seal at all. The parties must coordinate to make sure that the publicly available version redacts information that any party deems confidential. Redactions should be targeted to redact only that information. The publicly available version shall be labeled “PUBLIC VERSION.” Cooperating to file the publicly available version shall not be deemed as agreeing that the redacted information is confidential. The court will enter a sealed order to resolve a motion if either party filed its briefing under seal. The movant must email a redacted version of the

court's sealed order for publication within seven days after the court enters the sealed order. The movant must also email the redacted, public version to the court's law clerk (txwdml_lawclerks_wa_judgealbright@txwd.uscourts.gov).

- **JOINT OR UNOPPOSED REQUESTS TO CHANGE DEADLINES.** The court will automatically grant any request to extend a deadline or to amend a scheduling order, provided that (1) such request is unopposed or agreed to between the parties; (2) such request does not change the date of any hearing, trial, or other court date; and (3) such request does not extend any deadline of a final submission that affects the court's ability to hold a scheduled hearing, trial, or court event. Extensions for final submission deadlines at least one month before a scheduled hearing, trial, or court event will not affect the court. The parties must file any such request as a notice or stipulation to the court instead of a motion.
- **VENUE DISCOVERY.** The following presumptive limits on discovery related to venue and jurisdiction have been established: Each party is limited to five interrogatories, ten Requests for Production, and ten hours of deposition testimony. The time to respond to such discovery requests has been reduced to twenty days. If a party believes these limits should be expanded, the party must meet and confer with opposing counsel, and if an impasse is reached, the requesting party is directed to contact the court for a telephonic hearing. Venue or jurisdictional discovery must be completed no later than ten weeks after the filing of an initial venue motion. Parties must file a notice of venue or jurisdictional discovery if the court determines that additional argument would be of benefit discovery will delay a response to a motion to transfer.
- **MOTIONS FOR TRANSFER.** A motion to transfer anywhere may be filed within three weeks after the CMC or within eight weeks of receiving or waiving service of the complaint, whichever is later. Thereafter, a movant must show good cause for any delay and seek leave of court. The deadline for the plaintiff's response is two weeks after the completion of venue or jurisdictional discovery. The deadline for the defendant's reply is two weeks after the filing of the response. Responses to motions to transfer are due fourteen days after the Opening Brief if no venue or jurisdictional discovery has occurred. All parties who have filed a motion to transfer shall provide the court with a status report indicating whether the motion has been fully briefed at each of the following times: (1) when the motion to transfer becomes ready for resolution, (2) four weeks before the *Markman* hearing date if the motion to transfer remains unripe for resolution, and (3) if there are multiple *Markman* hearings, six weeks before the first scheduled *Markman* In addition, if by one (1) week before the *Markman* hearing, the court has not ruled on any pending motion to transfer, the moving party is directed to email the court's law clerk (and the technical advisor, when appointed) and indicate that the motion to transfer is pending. If a motion to transfer to another district remains pending, the court will either promptly resolve the pending motion before the *Markman* hearing or postpone the *Markman* hearing. Whenever a *Markman* hearing is postponed under this OGP (e.g., because the transfer motion has not yet ripened or only recently ripened), fact discovery will begin one day after the originally scheduled *Markman* hearing date.
- **MOTIONS TO DISMISS.** Any party seeking to dismiss claims of indirect or willful infringement before fact discovery must first meet and confer with the opposing party to discuss dismissing those allegations without prejudice, with leave to replead those allegations with specificity if supported by a good-faith basis under Rule 11, within three months after fact discovery opens while permitting fact discovery on indirect and willful infringement during those three months. The party moving to dismiss must attach a certification of compliance with this OGP to its motion to dismiss. An agreement to dismiss under this section shall be filed as a joint notice instead of a motion.

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