

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and  
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

C.A. No. 19-859-RTH

**PLAINTIFFS' UNOPPOSED MOTION TO AMEND THE  
SCHEDULING ORDER**

Plaintiffs e-Numerate Solutions, Inc., and e-Numerate, LLC (collectively “e-Numerate” or “Plaintiffs”) hereby moves this Court to amend the current Scheduling Order (D.I. 57) in this matter in light of a medical condition incurred by a member of Plaintiffs’ trial team that will require surgery and a period of recovery following the surgery. The parties met and conferred and the Government does not oppose this motion and leaves its adjudication to the sound discretion of the Court. In support thereof, Plaintiffs aver as follows.

WHEREAS this litigation involves eight United States Patents and multiple claims within each patent;

WHEREAS Plaintiffs served their preliminary infringement contentions in this matter on December 15, 2020, when this litigation involved seven patents;

WHEREAS Plaintiffs served supplemental preliminary infringement contentions on February 26, 2021;

WHEREAS Plaintiffs amended the Complaint on April 27, 2021, to assert United States

Patent 10,423,708;

WHEREAS the Government served its preliminary invalidity contentions (“invalidity contentions”) on July 6, 2021;

WHEREAS the Government’s invalidity contentions set forth 62 separate invalidity contentions based on alleged prior art either alone or in combination;

WHEREAS the Government additionally advanced three invalidity contentions based on obviousness-type double patenting that also includes alleged prior art;

WHEREAS the Government also advanced multiple invalidity theories under 35 U.S.C. § 112;

WHEREAS the Government supplemented aspects of its invalidity contentions to avoid motion practice on July 26, 2021;

WHEREAS Plaintiffs agreed not to engage in motion practice regarding Defendant’s invalidity contentions (this agreement does not preclude Plaintiffs moving for summary judgment and/or *Daubert* and/or motions in limine regarding the substance of the contentions); and

WHEREAS Plaintiffs were granted additional time pursuant to D.I. 57 to consider the multiplicity of invalidity theories advanced by the Government as well as the Government’s supplemental invalidity contentions before engaging in claim construction in this matter;

WHEREAS a member of Plaintiffs’ trial team suffered a medical condition on August 19, 2021 during a trial in the Superior Court for the State of Delaware that required a trip to the emergency room and continuance of the trial;

WHEREAS the member of Plaintiffs’ trial team will require surgery to address the medical condition followed by a period of recovery and said surgery is presently being scheduled;

WHEREAS the member of Plaintiffs' trial team is materially involved in the review of the Government's invalidity contentions and the preparation for the claim construction proceedings;

WHEREAS Plaintiffs may suffer prejudice absent the involvement of the trial team member in the invalidity contention review and the preparation for the claim construction proceedings;

WHEREFORE, Plaintiffs respectfully move this Court to amend the Scheduling Order as follows, which the Government does not oppose and leaves to the sound discretion of the Court:

EVENT	PRIOR DEADLINE	NEW DEADLINE
Parties exchange claim terms for construction	3 September 2021	8 October 2021
Parties exchange proposed claim construction	17 September 2021	22 October 2021
Parties disclose extrinsic evidence they may rely upon for claim construction	24 September 2021	5 November 2021
Deadline to meet and confer to narrow terms in dispute and exchange revised claim constructions	1 October 2021	19 November 2021
Plaintiffs file their opening claim construction brief	8 October 2021	3 December 2021
The Government files its responsive claim construction brief	29 October 2021	7 January 2022
Plaintiffs file their reply claim construction brief	12 November 2021	21 January 2022
The Government files its sur-reply claim construction brief	3 December 2021	11 February 2022
The parties submit the joint claim construction statement and propose dates for the Markman hearing in the first half of January	10 December 2021	18 February 2022
If desired, parties may submit joint technical tutorial to the Court	17 December 2021	25 February 2022

Markman Hearing	To be scheduled	To be scheduled
Deadline for the government to produce technical documents for additional agencies named in the second amended complaint.	31 January 2022	7 March 2022

Dated: August 24, 2021

Respectfully submitted,

/s/ Sean T. O'Kelly

Sean T. O'Kelly  
Gerard M. O'Rourke  
O'KELLY & O'ROURKE, LLC  
824 N. Market Street, Suite 1001A  
Wilmington, DE 19801  
302-778-4000  
[sokelly@okorlaw.com](mailto:sokelly@okorlaw.com)  
[gorourke@okorlaw.com](mailto:gorourke@okorlaw.com)

*Attorneys for Plaintiffs*