

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. 59) in this matter in light of a medical condition incurred by a member of Plaintiffs’ trial team. The parties met and conferred and Defendant United States (the “Government”) does not oppose this motion. In support thereof, Plaintiffs aver as follows.

WHEREAS a member of Plaintiffs’ trial team was diagnosed with COVID-19 on or about October 28, 2021;

WHEREAS the member of Plaintiffs’ trial team must quarantine in light of the positive diagnosis;

WHEREAS the member of Plaintiffs’ trial team is materially involved in the claim construction proceedings in this matter;

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

WHEREAS the Government does not object to the extension of deadlines based on the medical condition set forth herein or the schedule listed below but respectfully maintains that the present motion should be adjudged at the same time as that of Plaintiffs' anticipated follow-on (opposed) motion to invert the order of claim construction briefing. The Government objects to the injection of six weeks into the schedule to the extent that time is then used by Plaintiffs to argue that there is sufficient time to invert that order and notes that the proposed schedule herein even allows Plaintiffs a second opportunity to provide constructions for terms that the Government previously identified.

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

| EVENT | PRIOR DEADLINE | NEW DEADLINE |
|---|------------------|------------------|
| Plaintiffs provide constructions for terms identified by the Government on 8 October 2021 | 22 October 2021 | 19 November 2021 |
| Parties disclose extrinsic evidence they may rely upon for claim construction | 5 November 2021 | 3 December 2021 |
| Deadline to meet and confer to narrow terms in dispute and exchange revised claim constructions | 19 November 2021 | 19 December 2021 |
| Plaintiffs file their opening claim construction brief | 3 December 2021 | 14 January 2022 |
| The Government files its responsive claim construction brief | 7 January 2022 | 18 February 2022 |
| Plaintiffs file their reply claim construction brief | 21 January 2022 | 4 March 2022 |

| | | |
|--|------------------|-----------------|
| The Government files its sur-reply claim construction brief | 11 February 2022 | 18 March 2022 |
| The parties submit the joint claim construction statement and propose dates for the Markman hearing in the first half of January | 18 February 2022 | 25 March 2022 |
| If desired, parties may submit joint technical tutorial to the Court | 25 February 2022 | 1 April 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. | 7 March 2022 | 15 April 2022 |

Dated: November 2, 2021

Respectfully submitted,

/s/ Sean T. O'Kelly

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