

Judge Albright Previews Revised Order Governing Proceedings and Provides Sample Juror Questionnaire on Website

JULY 17, 2020

Judge Albright will soon be posting and using a revised Order Governing Proceedings (OGP) with changes related to discovery practice and issues related to claim construction.

The Court will explicitly permit parties with leave to conduct discovery related to venue and jurisdiction, including, but not limited to, requests for production, interrogatories, and depositions. Following his general practice, for any disputes regarding the reasonableness of discovery requests, the Court encourages parties to schedule telephonic discovery hearings.

As for changes to claim construction, the Court previously had no limit on the number of asserted claims to be construed, but in the upcoming OGP, the Court will impose presumed limits based on the number of patents asserted in the lawsuit. Below is a chart of presumed limits based on the number of patents-in-suit:

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

The Court will consider granting leave for additional terms, depending on the complexity and number of terms, and the Court may split the *Markman* hearing into two hearings. The Court will further require submission of technology tutorials, if necessary, no later than one week before the *Markman* hearing. Judge Albright requests that the parties' tutorials with voiceovers be around 15 minutes. If a party wishes to present a live tutorial, the Court will ask the party to contact the Court to set-up a Zoom or telephonic tutorial to occur at least one week before the *Markman* hearing. Audio recordings of *Markman* briefs should not be submitted, according to the revised OGP, and the Court will require parties to meet and confer twice after the *Markman* hearing to discuss narrowing the number of claims asserted, in the hopes of reaching a reasonable amount for trial. The Court encourages the parties to contact the law clerk for disputes related to narrowing asserted claims.

As a general matter, parties should contact the Court before submitting a brief via audio to determine whether it would be helpful to the Court. Further, extensions for responding to a complaint of more than 45 days, even if agreed by the parties, is disfavored by the Court. Finally, the Court will require the plaintiff to notify the Court when an IPR is filed, with expected dates for an institution and final decision, within two weeks of the filing of the IPR.

Judge Albright has also provided a sample juror questionnaire on his website for parties to use in patent trials. The questionnaire may be accessed [here](#).

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