

**Procedures Regarding Technology Tutorials,  
Claim Construction, Discovery Disputes, and  
Trial Date  
for the Honorable Alan D Albright**

## **Technology Tutorial**

Although the Court generally benefits from a technology tutorial, tutorials are optional. Tutorials must be submitted at least a week before the Markman hearing (via email, cloud-storage, or USB drive) and should be relatively short, approximately 10-15 minutes per side. The Court prefers that the parties contact the Court ([TXWDml\\_LawClerks\\_JudgeAlbright@txwd.uscourts.gov](mailto:TXWDml_LawClerks_JudgeAlbright@txwd.uscourts.gov)) to request a link so they can directly upload the tutorials to the Court's Box account.

The purpose of the tutorial is to educate the Court on the technology-at-issue. The most helpful tutorials are those that are technical, explain the problem the inventor faced, and the technological solution embodied in the patent. Tutorials that are less helpful describe what happened during prosecution and/or recite passages from the specification. The explanation for the tutorials should be in layman's terms, similar to how it would be explained to a freshman engineering class at the University of Texas at Austin.

Tutorials may be narrated by a lawyer, an expert, or someone from the client.

Examples of tutorials that the Court has found to be particularly helpful can be found at <https://www.txwd.uscourts.gov/judges-information/exemplary-tutorials/>.

## **Claim Construction Briefing and Hearing**

Prior to the hearing, the Court and the law clerk will have read all the briefing.

For any term where a party provides multiple reasons why the Court should adopt its construction, the Court presumes that a party will present its best argument first. Similarly, the Court presumes that a party will present its best argument first at the Markman hearing.

The Court has found it to be helpful when the parties, in their reply briefs, summarize the best arguments for their construction and the most problematic issues with the other side's argument.

The Court will provide preliminary constructions for all terms the day before the hearing, ideally before 5:00 PM Central time. The purpose of preliminary constructions is to streamline the hearing by providing the parties an indication of the Court's current position for each term. Although the parties are, of course, free to argue for their originally proposed construction, it is generally unlikely that the Court will select a party's originally proposed construction over the preliminary construction. As such, the Court believes that making arguments to fine-tune the preliminary construction may be more helpful. The preliminary constructions are not final as the Court may change some those constructions based on the arguments at the hearing.

As a general rule, the party opposing the Court's preliminary construction shall go first. There is no advantage for going first or last. The Court permits the parties to finish making their arguments or rebuttals unless the Court comes to a decision sooner.

The Court will generally provide a final construction at the end of every term or, occasionally, at the end of the hearing.

The Court permits the parties to use PowerPoint and other visual aids. The parties, however, should not expect to march through their slides without interruption. Rather, the parties should expect that the Court will be prepared, engaged, and ask questions throughout the hearing.

To the extent would prefer to conduct the hearing by Zoom, the parties should contact the Court at least two weeks before the Markman hearing.<sup>1</sup>

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<sup>1</sup> Until the COVID-19 pandemic is over, the Court's default is Zoom.

## **Discovery and Other Disputes**

If the parties reach an impasse over any issue, rather than engage in motion practice, the parties should contact the Court to request a telephonic (or Zoom) hearing. The Court is generally able to schedule a hearing and/or resolve disputes within 24 hours. To the extent the parties believe that it will be helpful for the Court, the parties may email or file a short joint letter describing the parties' respective positions. Before contacting the Court, however, the parties must be at an impasse and must have already discussed all issues and solutions they intend to raise with the Court.

## **Trial Date**

At or before the CMC, the Court will provide an estimated trial date based on the number of patents-in-suit, the complexity of the case, *etc.* To the extent the parties would like to reset the trial date, the parties should raise that at the end of the Markman hearing.

After the trial date is set, the Court will not move the trial date except in extreme situations. To help the parties prepare for trial, the Court is available on very short notice to help the parties resolve issues or provide guidance that can help the case move forward. The Court is also willing, if circumstances permit, to reduce the time it has to review summary judgment and Daubert motions.

To the extent a party believes that the circumstances warrant continuing the trial date, the parties are directed to contact the Court to request a telephonic hearing.