

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARRIVALSTAR S.A. AND MELVINO
TECHNOLOGIES LIMITED,

Plaintiffs,

v.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,

Defendant.

Case No. C12-977Z

MINUTE ORDER SETTING
TRIAL AND RELATED DATES

TRIAL DATE

March 24, 2014

Statement of asserted claims and preliminary infringement
contentions due

October 9, 2012

Statement of preliminary invalidity contentions

November 12, 2012

Deadline for joining additional parties and amending pleadings

November 26, 2012

Deadline for disclosing reports from expert witnesses, if any,
regarding Markman issues

December 7, 2012

Deadline for disclosing rebuttal expert reports, if any, regarding
Markman issues

January 7, 2013

Parties to exchange preliminary proposed constructions of disputed
claim terms and provide list of proposed extrinsic evidence

January 11, 2013

Joint claim chart and Prehearing Statement due

February 15, 2013

Deadline for completing claim construction discovery

February 15, 2013

1	Opening claim construction briefs (24 pages per side) filed by	February 22, 2013
2	and noted for the date that the responsive claim construction	
	briefs are due	
3	Responsive claim construction briefs (24 pages per side) filed by	March 8, 2013
4	and noted for the date that the responsive claim construction	
	briefs are due	
5	<u>Markman</u> hearing	at 9:00 a.m. on April 4, 2013
6	Reports from expert witnesses under FRCP 26(a)(2) due	July 12, 2013
7	Rebuttal expert reports due	August 12, 2013
8	All motions related to discovery must be filed by	September 19, 2013
	and noted on the motion calendar no later than the third	
	Friday thereafter (<u>see</u> CR 7(d))	
9	Discovery completed by	October 28, 2013
10	All dispositive motions must be filed by	November 21, 2013
11	and noted on the motion calendar no later than the	
	fourth Friday thereafter (<u>see</u> CR 7(d))	
12	Settlement conference per CR 39.1(c)(2) held no later than	December 13, 2013
13	Mediation per CR 39.1(c)(3) held no later than	December 30, 2013
14	All motions <i>in limine</i> must be filed by	February 20, 2014
15	and noted on the motion calendar for the Friday before the	
	pretrial conference; responses shall be due on the noting	
	date; no reply shall be filed unless requested by the Court	
16	Agreed pretrial order due	March 7, 2014
17	Trial briefs, proposed voir dire questions, and proposed	March 7, 2014
	jury instructions due	
18	Pretrial conference to be held at 2:00 p.m. on	March 14, 2014
19	Length of Jury Trial:	8 days

20 These dates are set at the direction of the Court after reviewing the joint status report and
21 discovery plan submitted by the parties. All other dates are specified in the Local Civil Rules. If
22 any of the dates identified in this Order or the Local Civil Rules fall on a weekend or federal
23 holiday, the act or event shall be performed on the next business day. These are firm dates that
24 can be changed only by order of the Court, not by agreement of counsel or the parties. The
25 Court will alter these dates only upon good cause shown: failure to complete discovery within
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1 the time allowed is not recognized as good cause.

2 If the Markman hearing or trial dates assigned to this matter create an irreconcilable
3 conflict, counsel must notify Ms. Claudia Hawney at 206-370-8830, within 10 days of the date
4 of this Order and must set forth the exact nature of the conflict. A failure to do so will be
5 deemed a waiver. Counsel must be prepared to begin trial on the date scheduled, but it should be
6 understood that the trial may have to await the completion of other cases.

7 CLAIM CONSTRUCTION PROCEDURES

8 The following procedures shall apply to all patent claim construction issues:

9 Asserted Claims and Preliminary Infringement Contentions

10 A party claiming patent infringement will serve on all parties a statement of the Asserted
11 Claims and Preliminary Infringement Contentions, which will include the following information:
12 (1) the identity of each claim of each patent alleged to be infringed; (2) the identity of the
13 opposing party's accused device/method/etc. by specific name/model number/etc. for each claim
14 asserted; (3) a chart that identifies specifically where each element of each asserted claim is
15 found within each accused device/method/etc.; (4) whether each element is literally or
16 equivalently infringed; and (5) the priority date to which each asserted claim allegedly is
17 entitled, if priority is an issue.

18 Preliminary Invalidity Contentions

19 A party opposing a claim of infringement on the basis of invalidity shall serve on all
20 parties a statement of its Preliminary Invalidity Contentions including: (1) the identity of prior
21 art that allegedly anticipates each asserted claim or renders it obvious; (2) whether each piece of
22 prior art anticipates or renders obvious the asserted claims; (3) a chart that identifies where in
23 each piece of prior art each element of each asserted claim is found; and (4) any grounds for
24 invalidity based on indefiniteness, enablement, or written description under 35 U.S.C. § 112.

Expert Reports

1
2 If the parties wish to present expert testimony at the claim construction hearing, the
3 parties will serve on all parties expert reports related to claim construction by the date establish-
4 ed in the Scheduling Order. Rebuttal expert reports will be exchanged 30 days later. These
5 dates do not affect the more general expert report deadlines included in this Scheduling Order.

Proposed Terms and Claim Elements and Preliminary Claim Chart

6
7 At some point prior to the formulation of the preliminary claim chart, the parties will
8 exchange a list of Proposed Terms and Claim Elements, which will include each term that each
9 party contends the Court should construe. Each party will also identify any claim element that it
10 contends should be governed by 35 U.S.C. § 112(6) as a means-plus-function element. The
11 parties will then meet to identify terms in genuine dispute and facilitate the preparation of the
12 Joint Claim Chart.

13 The parties will then exchange preliminary proposed constructions for each disputed
14 claim term that the parties have collectively identified. Each party will also provide a
15 preliminary identification of any extrinsic evidence, along with a copy of it, as well as a brief
16 description of any witness' proposed testimony that supports its construction of the claim. The
17 parties will then meet to narrow the issues and finalize the Joint Claim Chart and Prehearing
18 Statement.

Joint Claim Chart and Prehearing Statement

19
20 All allegations of infringement and invalidity will be filed with the Court in the form of a
21 Prehearing Statement. After that time, the Court will not consider new allegations of
22 infringement or invalidity without the asserting party showing good cause. A Joint Claim Chart
23 will also be filed, in the format provided in the Sample Joint Claim Chart found at the end of this
24 Order. This Chart will include each party's proposed construction of disputed terms, together
25 with specific references to the relevant portions of the specification and the prosecution history,
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1 and descriptions of the extrinsic evidence to be used. The parties will attach to the Joint Claim
2 Chart copies of all patents in dispute, together with the relevant prosecution history. These
3 documents need not be resubmitted upon briefing. The parties will have the complete
4 prosecution history available at the Court's request. In addition, the parties will indicate whether
5 any witnesses are to be called, and if so, their identities. For expert witnesses, the party calling
6 the expert will provide a summary of the opinion to be offered.

7 The Court expects the terms to be truly in dispute, and further expects that the preparation
8 of the Preliminary and Joint Claim Charts will narrow the terms in dispute. A party is not
9 allowed to propose a construction when the other party is unable to respond without leave of
10 court (e.g., in a Response Brief). If a party must propose a new construction, the Joint Claim
11 Chart must be amended to reflect that change. At the time of the Hearing, the Joint Claim Chart
12 before the Court must reflect the current proposed constructions.

13 The parties should note that the Court will construe **a maximum of 10 claim terms** at the
14 initial Markman hearing. Prioritization should be guided by the twin goals of narrowing the
15 issues and choosing the 10 claim terms for which a claim construction would be most productive
16 in terms of setting the groundwork for possible settlement.

17 Court-Appointed Neutral Expert and Claim Construction Hearing

18 The Court will consider appointment of a Rule 706 Court-Appointed neutral expert, and
19 directs the parties to confer within 30 days of this Order and advise the Court as to their position
20 on whether the appointment of a Rule 706 expert is appropriate.

21
22 The claim construction hearing will be set for one full trial day (5 hours). If more or less
23 time is required, the parties are instructed to inform Ms. Claudia Hawney at 206-370-8830.

1 PLEASE NOTE: The Court will not rule on dispositive motions that raise issues of claim
2 construction prior to the Hearing, unless special circumstances warrant and leave of Court is
3 obtained in advance of filing.

4
5 COOPERATION

6 As required by CR 37(a), all discovery matters are to be resolved by agreement if
7 possible. Counsel are further directed to cooperate in preparing the Joint Claim Chart and final
8 pretrial order in the format required by CR 16.1, except as ordered below.

9
10 MEDIATION

11 The Court finds this case is appropriate for mediation under Local Rule 39.1. The
12 parties are directed to conduct mediation upon completion of discovery as hereinafter
13 provided.

14 IT IS ORDERED that the parties exchange written demands for settlement and that
15 counsel meet and discuss settlement within six months of this Order.

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17 IT IS ORDERED that the mediator be selected by the cutoff date for completion of
18 discovery. The parties are advised that the Court's home page at www.wawd.uscourts.gov
19 contains a roster of approved mediators and their profiles. This information is also
20 available for viewing in Seattle and Tacoma at the intake counter of the Clerk's Office. **In the**
21 **alternative, the parties may select any mediator that is agreeable to the parties whether or**
22 **not such person is on the District roster.** Counsel are directed to file with the Court the name
23 of the mediator as soon as one is selected. The mediation will be conducted at such time or times
24 as the mediator may determine. Mediation shall be completed no later than thirty (30) days prior
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1 to the trial date. The parties are strongly encouraged to mediate prior to completion of discovery.

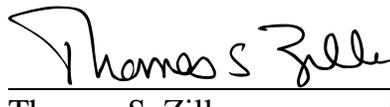
2 EXHIBITS

3 The original and one copy of any exhibits to be used at the Markman hearing and/or trial
4 are to be delivered to chambers five days before the trial date. Each exhibit shall be clearly
5 marked. Exhibit tags are available in the Clerk's Office. The Court hereby alters the CR 16.1
6 procedure for numbering exhibits: plaintiff's exhibits shall be numbered consecutively
7 beginning with 1; defendant's exhibits shall be numbered consecutively beginning with A-1.
8 Duplicate documents shall not be listed twice: once a party has identified an exhibit in the
9 pretrial order, any party may use it. Each set of exhibits shall be submitted in a three-ring binder
10 with appropriately numbered tabs.
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13 SETTLEMENT

14 Should this case settle, counsel shall notify Ms. Claudia Hawney at 206-370-8830 as
15 soon as possible.
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17 DATED: October 2, 2012.

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19 Thomas S. Zilly
20 United States District Judge
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Sample Joint Claim Chart

Claim Language (Disputed Terms in Bold)	Plaintiff's Proposed Construction and Evidence in Support	Defendant's Proposed Construction and Evidence in Support
<p>'123 Patent</p> <p>1. A method for mending fences</p> <p>[or]</p> <p>fences</p> <p>Found in claim numbers:</p> <p>'123 Patent: y, z '456 Patent: a, b</p>	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things out.</p> <p><u>Dictionary/Treatise Definitions:</u> Merriam-Webster Dictionary ("a barrier intended to prevent . . . intrusion").</p> <p><u>Intrinsic Evidence:</u> '123 Patent col _:__ ("keeps stray animals out"); Prosecution History at __ ("this method is more effective than the prior art in reinforcing the fence, and therefore in keeping out unwanted intruders").</p> <p><u>Extrinsic Evidence:</u> R. Frost Depo. at xx:xx ("Good fences make good neighbors"); '000 Patent at col _:__; Vila Decl. at ¶__.</p>	<p>fence</p> <p><u>Proposed Construction:</u> A structure that keeps things in.</p> <p><u>Dictionary/Treatise Definitions:</u> Random House Dictionary ("a barrier enclosing or bordering a field, yard, etc. ").</p> <p><u>Intrinsic Evidence:</u> '123 Patent col _:__ ("keeps young children from leaving the yard "); Prosecution History at __ ("dilapidated fences meant to pen in cattle are particularly amenable to this method").</p> <p><u>Extrinsic Evidence:</u> C. Porter Depo. at xx:xx ("Don't fence me in"); '111 Patent at col _:__; Thomas Decl. at ¶__.</p>

(or similar format that provides side-by-side comparison)