

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**STANDING ORDER REGARDING MOTIONS UNDER  
35 U.S.C. § 101 AND ACCOMPANYING CERTIFICATIONS  
IN CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE RODNEY GILSTRAP**

WHEREAS, this Court recognizes that claim construction may be appropriate in properly deciding issues under 35 U.S.C. § 101 in certain cases and such may not be appropriate in other cases; and

WHEREAS, the Court, in seeking to efficiently manage its docket, believes such efficiency is enhanced by early input as to the propriety or lack thereof regarding claim construction prior to consideration of such motions;

NOW, THEREFORE, IT IS ORDERED THAT parties seeking to file pre-*Markman* hearing dispositive motions under 35 U.S.C. § 101 (that is: prior to entry of the Court's claim construction order) shall include, as a part of such motions, the following certification, completed and signed as follows and as may be appropriate in such case:

**CERTIFICATE OF COMPLIANCE WITH THE COURT'S  
35 U.S.C. § 101 MOTION PRACTICE ORDER**

\_\_\_\_\_ The parties **agree** that prior claim construction is not needed to inform the Court's analysis as to patentability.

\_\_\_\_\_ The parties **disagree** on whether prior claim construction is not needed to inform the Court's analysis as to patentability.

/S/ Lead Counsel for Movant

The meet and confer process required in advance of properly making the above certification to the Court shall require one-on-one communication. As used herein, the term "one-on-one" communication shall mean that lead counsel for both sides shall diligently


communicate orally and directly with each other (in person or telephonically) with no others advising, interjecting, or otherwise participating in such communication. The requirement that lead counsel meet and confer “one-on-one” is intended to avoid an ineffective meet-and-confer process and to heighten the level of seriousness and attention devoted to this process. To the extent such certification reflects disagreement, the parties shall submit a joint letter containing not more than two (2) pages from each side (four pages total) to the Court within ten (10) days from the filing of the § 101 motion, setting forth their respective specifics surrounding such disagreement, including, in particular, any claim terms that the respondent believes need to be construed, why such is needed, and what intrinsic references support such position. Nothing included in such joint letter shall bind the parties as to the § 101 motion, future claim construction, or any other proceeding before the Court.

The Court shall exercise its inherent power to manage its docket by considering the parties’ positions in this regard as it schedules and takes up such § 101 motions. Nothing herein shall necessitate advance leave of court to file such § 101 motions; but rather, compliance with this certification process is required as set forth above.

The clerk shall reject the filing of such pre-*Markman* motions when this certification process has not been met. These requirements do not apply to § 101 motions filed after the entry of a claim construction order.

This Standing Order supplements but does not supersede the Rules of Practice for Cases before the Eastern District of Texas; however, this order does replace that portion of current docket control orders which previously required leave of court to file a § 101 motion in advance of claim construction.

**So ORDERED and SIGNED this 10th day of November, 2015.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE