

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC.,

Plaintiff,

v.

ROVI CORPORATION, et al.,

Defendants.

No. C 11-6591 PJH

**ORDER GRANTING IN PART MOTION
FOR LEAVE TO FILE EARLY MOTION
FOR SUMMARY JUDGMENT**

On December 15, 2014, Netflix filed a motion for summary judgment, seeking a ruling that Rovi's patents are invalid under 35 U.S.C. § 101. The court then advised Netflix that it was entitled to only one motion for summary judgment in this case, that would be heard after claim construction, and that it needed to seek leave if it intended to go forward with the already-filed motion.

On December 16, 2014, Netflix filed an administrative motion seeking leave to file its (already-filed) motion for summary judgment. Rovi filed an opposition to the motion on December 21, 2014.

As a matter of procedure, the court finds that Netflix's motion was improperly filed. Netflix did not seek leave of court, nor did it meet and confer with Rovi, prior to filing its early motion for summary judgment. The court also wholly rejects Netflix's attempt to circumvent the court's rules by re-characterizing its motion as a motion for judgment on the pleadings under Rule 12(c).

While Netflix's motion may indeed present a threshold issue for the court to consider, the court will not consider the motion before claim construction – and will instead hear Netflix's motion at the same time that it hears claim construction arguments. Thus,

1 while the court GRANTS in part Netflix's administrative motion, the court VACATES the
2 January 21, 2015 hearing date. The court will instead hear the motion for summary
3 judgment on **March 25, 2015**, and sets the following briefing schedule:

4 Rovi's opposition due: **January 30, 2015**

5 Netflix's reply due: **February 18, 2015**

6 The court will not grant any extensions of these deadlines. The court also limits
7 Netflix to two motions for summary judgment in this case – the already-filed motion for
8 summary judgment of invalidity under section 101, and one additional motion to be filed
9 after the close of discovery. No further leave will be granted.

10 **IT IS SO ORDERED.**

11 Dated: December 22, 2014



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13 PHYLLIS J. HAMILTON
United States District Judge